Supreme Court, U.S.
FILED

Docket No: 051440 DEC 14 2005

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United States Supreme Court

Glenn Henderson
Plaintiff

v.

Office and Professional Employees International Union and Christine Page

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth District

Petition for Writ of Certiorari

Glenn Henderson, Plaintiff pro se
409 S. Manhattan Pl. #25
Los Angeles, CA 90020
213-427-0679

Questions

1. Had the statute of limitations run out?
2. It is against the idea of freedom of thought, and it is wrong and dangerous to tell someone what he or she should think, believe, and know?
3. Was there due process?
4. Were the courts legislating new law?
5. Should state issues have been sent back to state court if all federal issues were dismissed?
6. Does Title VII prohibit discrimination by unions?
7. Was there fairness and get equal protection for a person in pro se?
8. Am I entitled to and is it equitable to allow me to defend myself and my reputation and to clear my name against untrue and defaming comments in court papers even if there is no monetary or other type of compensation?
9. Is the six months statute of limitations too short?
10. Is it legally permissible to and is it a right to be able to complain to a vendor of one's employer about harassment and defamation?
11. Were my claims and statements given the most favorable light?

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Citations

The Appeals Court said "the six month limitations period begins to run out when the employee knows or should known of the alleged breach of the duty of fair representation by his union."

The Appeals Court said the "claims for discrimination and retaliation were properly dismissed."

Basis for Jurisdiction

Date appeal affirmed: 6/22/05
Date of order related to rehearing: 9/15/05
This Court should have jurisdiction because the case was reviewed by the Federal Ninth Circuit Court of Appeals.
Statutory Provision: Petition for Writ of Certiorari may be filed after review by a federal court of appeals.

Constitutional Provisions and Statutes

Due process: Amendment V says that no person shall be "deprived of life, liberty, or property without due process of law."
The Constitution allows for freedom of thought and belief, equal protection, and fairness even if not stated that way.

Statement of the Case and Points

I had worked at Sony Pictures Entertainment and was in a union, the union of Office and Professional Employees International Union. I was a Cash Allocation Clerk. I applied customers' checks to their invoices. I was wrongly punished and finally wrongly terminated. Sony showed I made one definite cash application mistake. One issue was that I complained to a bank about harassment and untrue accusations; Sony said I could not do that. No other issues had any basis for punishment. I believe the union did not adequately help me, but the union claims they did.

1. The statute of limitations had not run out. The rule is that the statute of limitations begins to run when the plaintiff knows or should know that the defendant did something wrong. The District Court and Appeals Court used the idea that the statute of limitations began when I knew or should have known that the union would not help me any more. I have never known if their not helping me any more was wrong. Defendant Ms. Page told me the union had done all it was required to do, and I believed her. The statute of limitations still has not begun to run because I do not know if union did all it was required to do and if the union did wrong. I have been asking the Courts that.
2. It is against the idea of freedom of thought, and it is wrong and dangerous to tell someone what he or she should think, believe, and know. In this case it is an undisputed fact that the union

representative, Christine Page, told me in February 2002 that the union had done all they were required to do. Both sides agreed that Ms. Page said that. I believed her. The union has continued to claim that in court papers. The union's lawyer agreed with Ms. Page's statement. I told a lawyer what Ms. Page said, and he agreed with what she said and said they, unions, did not have to do much. When Ms. Page made the statement, I thought she had talked with the union lawyers and that the lawyers were telling her what to do or say or what not do or say. Ms. Page had claimed she was going to speak with the lawyers before her statement.

Neither the District Court nor the Appeals Court explicitly stated it, but they may be implying that I should have known the union did something wrong by not helping me more. It seems incredible to me that someone should tell me I should have known they were lying or very wrong. People should have the right to think and believe what they want and believe whom they want. It is incredible if the Courts can tell someone what to think, believe, and know. That idea is stunning. In this case, it is not clear that I should have not believed these people. To this day, I still do not know if the union did all they were required or not. No Court has told me the answer. The courts have said I should have known the union was not going to help me in February 2002 or August 2002. They did not state that I

should have known the union did something wrong. They did not say if the union did something wrong, then the statute of limitations began in February 2002 or August 2002. The Appeals Court said that I acknowledged in my appeal paper that I knew the union was not going to help me any more in February 2002. That was when Ms. Page told me that the union had done all it was required to do. I did not at all say I knew the union would not help me any more when Ms. Page made the comment. It is incredible and scary that the Appeals Court claimed such a thing. The Courts did not say if the union did something wrong or if they did not, then the statute of limitations began in February 2002 or August 2002. I believe laws and rulings should be understandable and precise as possible. I believe I read that laws were supposed to be understandable. I should not have to guess what they meant. The courts are supposed to believe the plaintiff or look at his or her claims in the most-favorable light. The courts should have believed what I said, so they should have had to claim that I should have known and not that I did know the union did something wrong. It was not clear to me what the courts were claiming in that regard. I feel like the Courts are calling me too stupid for believing Ms. Page's claim that the union did all they were required to do or else saying I lied and did not believe the claim. It is not wrong to be stupid, and accusing me of lying would be

defamation. The courts seem to suggest a person must not trust and must be cynical. Also, a person should be allowed to hope someone is telling the truth. Hope is important for people. It helps keep people going. A person should be able to think freely. Saying a person should know seems very hard to do. It is not like saying someone should have wondered or that it does not make sense to not wonder. Knowing the union had not done all they were required to do seems to require that I be an expert on the law or good at it. I imagine even lawyers are not experts or maybe not real good at all areas of law. The Courts seem to want to say that, at least for legal claims, I am not allowed to believe these people.

3. Due Process. I did not get due process because the wrong rule or idea was used regarding the statute of limitations. Also, my claim that the statute of limitations dose not start until I knew the union did something wrong and not when I knew the union would not help me any more was not discussed. No reference to the law was made, no precedent was cited, and no other support was used to show my claim was wrong or that the courts used the right rule or idea about the statute of limitations.
4. State issues should have been sent back to state court if all federal claims were dismissed. That rule was not used or followed. I did not get due process about that. State fraud laws say a person

has to believe something, and they do not say a person should know better.

5. Discrimination and retaliation is not allowed by unions under Title VII. The courts did not allow these claims. The rules of Title VII were not followed or stated by the courts as they related to unions. That was not due process. The union discriminated against me as well as allowed Sony to discriminate against me.
6. I am afraid I was not treated fairly by the courts, and did not get a fair trial or fair pre-trial consideration or equal protection. I cannot help but wonder if the courts did not take me seriously enough and brushed me off because I was pro se. My opponent's lawyers and the judges that looked at my case were all part of a profession that I was not a part of. I do not claim that I know the law anywhere near as well as the lawyers and especially the judges do; I just want what I am told to make sense, I want my claims to be discussed and considered, and I want to be treated fairly and with due consideration and due process. Many of my claims were not discussed. The appeals court wrote little compared with other cases I have seen. I may not be good at writing court papers or I may be terrible, so maybe that has been a problem. I have been worried that because my former employer, Sony, was a movie studio, the courts may have been easier on them and in turn the union. I guess movie studios are powerful.

The District Court said it was clear that I knew the union was not going to help me when I filed a federal case against my former employer, Sony Pictures Entertainment, in August 2002 after filing a state case against Sony in March 2002. I filed the federal case because I was about to sign a settlement regarding the state case. Ms. Page had told me that the union would not help me with the state case, which was about denial of promotions; she said it was between me and the EEOC, where I had filed a complaint before my termination. The federal case was about much more than the denial of promotions and included such things as wrongful treatment in many ways and wrongful termination. I felt defamed and wrongly accused of falsely claiming I did not know or believe the union would not help me with claims not in the state case. My filing the federal case on my own did not mean the union could not still help me. The court did not question me about why I decided to file the federal case on my own; that was not fair or due process. The union never told me they would not help me about anything but the issue over denial of promotions. The union could have still helped me even if I filed the 2002 Sony federal case on my own. No one claims that I also decided no lawyer outside the union would help me and that that was a reason I filed on my own.

Also, the District Court said he would not allow defamation to be stretched to include the union's saying they thought I had improved.

Saying someone improved is great if someone did improve. My point was that, in the context used, that was like saying I was bad and not up to standards. I was never performing below standards. I had been issued a totally defaming Development Plan and a mostly defaming Written Warning. I thought the union's comment made it sound like I was as bad as the plan and warning said, but got better. I even believe the union was helping me at that time but stated things inaccurately. That comment, by itself, would not have led me to file a complaint in court. I just wanted the union to stick up for me and say that my work was always good. I believe most people think that when someone is said to have improved, he or she must have been bad before. Implied things can cause harm, too. It would have been fine if the union said they thought I had done all I was asked to do.

The only issue in my employment at Sony that was ever questionable was that I complained to a bank about being harassed. Sony, especially my immediate supervisor, Kim Russo, claimed I made 6 mistakes out of 34,000 checks I did. That is a 99.98% correct percentage. One of those six was definitely a mistake and one was definitely done right. I was told I made a mistake in adjusting one of the six alleged mistakes. I was told by my supervisor that I made few mistakes, handled a heavy workload, and worked well with others, yet

somehow I was fired for poor performance over the long term.

7. It seems to me that the courts were legislating new law by claiming the statute of limitations began running when I knew the union was not going to help me. The rule is the statute of limitations begins when I knew or should have known the defendant did something wrong. I have wondered if a jury should decide when the statute of limitations began. That seems like a question of what is fact.
8. Using the idea of equity, I believe I should have a chance to defend my reputation regardless of if any other remedy or compensation is allowed. I should have a chance to defend myself against allegations made by Ms. Page in a declaration paper in state court that I was violating rules and procedures, that I was irresponsible, negligent, and blaming others for my negligence and mistakes. Ms. Page never looked at all my evidence or talked with all my witnesses. She claimed that she got information from Sony and did an investigation on her own, but she does not claim she looked at all my evidence or talked with all my witnesses or even met with me after my termination. She never met with me after my termination. It is incredible and ludicrous that she seemed to be claiming she did a good faith and thorough investigation, without getting my side of what happened and without looking at my evidence and speaking with my witnesses. She

said she got "information" from Sony but did not say she got documentation.

9. I am worried that the six months statute of limitations may be discriminatory and unfair. It is hard for anyone to recover and get back on their feet in six months. It is hard to recover financially and psychologically. People need to have more than six months to get back on their feet. Personally, I have anxiety disorder and depression. I have symptoms of post traumatic stress syndrome from an incident at age five. Those conditions can be hard to recover from when an event like termination occurs.
10. I was treated arbitrarily. Ms. Page said the union won some cases they thought they would lose and lost some cases they thought they would win. She also said they would have to consider the costs of going to arbitration and if they thought they could win. That sounds like a very arbitrary process. The law dictates that unions should not be arbitrary.
11. The Union was my legal representation and did a poor job. I did not have competent legal representation and was not adequately helped and not informed of my rights. No other lawyer could help me because the union was my legal representation and did not give up that right at any time. Maybe the union should have even told me about the 6 months statute of limitations related to them. I was told after I was fired that I was still a union member but inactive. I was never told that

my membership stopped. Currently, I am vested in a union pension, so I may still be part of the union in some indirect way. I am not sure.

12. I wondered if tolling the statute of limitations was possible if it is ruled the statute of limitations began when I knew the union would not help me. Because I was depressed, had anxiety disorder, and symptoms of post traumatic stress syndrome, maybe the statute of limitations could have be tolled until I got over that.
13. The six months statute of limitations is not equal treatment or protection. From what I have seen, most breach of contract or fraud claims have a three year statute of limitations or one for more than six months. Also, other fraud laws seem to state that the person can believe someone and does not have to know better. The courts may be implying that I should have known better than to believe the union and others about if the union did what it was required to do.
14. Defamation and harm to reputation and equity. Ms. Page said I was a bad employee and negligent and irresponsible in court papers. I want a chance to defend myself from those false and malicious comments and clear my name even if there was no other compensation available or allowed. I believe that would allow for equity. Ms. Page's comments were perjury. The union's not helping me damaged my reputation because I was not supposed to be punished or terminated without cause. So, the union was implying that I was so

bad that they would not help me. Inactions have meaning like words and actions.

15. Fair Trial. Ms. Page's defaming comments and perjury in court papers was an attempt to cost me a fair trial. It was malicious.

16. Ms. Page as a defendant. Ms. Page refused to do her job and then maliciously defamed me and committed perjury in court papers. There should be remedy for that. She was not acting in the normal capacity of her job.

17. Other Points. While I was at Sony, I told Ms. Page that I wanted to file a grievance about a Development Plan I was put on. She said my response was my grievance. I took her word. I now believe her response was not true and was fraudulent. The union would not help me with two EEOC sponsored mediations. I now believe they should have, but at the time I accepted Ms. Page's refusal as legal. I do not believe I got adequate help in finding another job after being fired from Sony. I could answer a job line like all union members, and I believe one time a union employee sent my resume without my asking, which was good. I do not think that was adequate though.

Neither Ms. Page nor anyone else at the union ever told me they were not going to help me. Ms. Page only said they had done what they were required to do.

My reputation was ruined or harmed by Sony and the union helped with that harm.

The union helped another employee who had a problem with a manager and helped him get another position in the same company, but the union would not help me. That was arbitrary and discriminatory.

I have never been able to find the law referred to in my case: LMRA Section 301.

I wanted to add that I have never wanted to act as my own attorney. I have contacted 11-12 attorneys and have asked for the court's help in finding an attorney. None of the attorneys said I did not have a case. Acting on my own, I am afraid I do not know what to say in court papers.

In state court, the union and I were 13 days away from a trial date that had been set. The union asked for an extension, I agreed, and the union later got the case dismissed. I do not really understand why we got so close to a trial date and then every issue was dismissed.

In my state case with the union, the union and/or union lawyer should not have been allowed to see the settlement agreement I signed with Sony. That was a violation of privacy. I gave them a copy because the lawyer told of possible sanctions. He said they were entitled to see because I used to be in the union.

The Appeals Court said I did not state a claim for some issues, and I d o not understand what that meant. I thought for sure I had stated a claim; I claimed what the union had done.

Basis of jurisdiction of first court. The United States District Court had jurisdiction because unions are governed by federal law, which takes priority over state law.

Argument for review on a Writ of Certiorari

This Court has not decided if being told a union does not have to help believing it is the same as knowing or concluding one should know the union did something wrong. The District Court and Appeals Court did not properly state the rule; they said the statute of limitations began when I knew or should have known the union would not help me and not when I knew or should have known the union did something wrong.

Attorneys of Record

Glenn Henderson, Plaintiff pro se
409 S. Manhattan Pl. #25
Los Angeles, CA 90020
213-427-0679

Jeffrey Wohlner,
Attorney for Office and Professional Employees International Union and Christine Page
15456 Ventura Blvd., Suite 500
Sherman Oaks, CA 81403
818-501-5306

Appendix

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Stamped: FILED
SEP 15 2005
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

No. 04-566646
DC# CV –03-08082-DDP
ORDER

GLENN C. HENDERSON,
Plaintiff – Appellant

V.

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION; et al.,
Defendants – Appellees.

Before: KLEINFELD, TASHIMA, and THOMAS, Circuit Judges

The panel has voted to deny the petition for panel rehearing. Judges Kleinfeld and Thomas vote to deny the petition for rehearing en banc and Judge Tashima so recommends.

The full court has been advised of the petition for rehearing en banc and no judge has request a vote on whether to rehear the matter en banc. *See* Fed R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings shall be accepted in this closed appeal.

Stamped FILED CLERK, U.S. MAY 13 2004 BY (unknown name) DEPUTY
Stamped ENTERED CLERK, U.S. DISTRICT COURT MAY 14 2004 CENTRAL DISTRICT OF CALIFORNIA BY (unknown initials) DEPUTY

Stamped: THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 03-08082 DDP (SHSx) ORDER GRANTING THE DEFENDANTS' MOTION TO DISMISS [Motion filed on 4/12/04]

GLENN C. HENDERSON,)
Plaintiff,)
v.
OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, UNION LAWYERS, CHRISTINE PAGE,
Defendants)

The instant action is before the Court on the defendants' motion to dismiss. Pursuant to Local Rule 7-15, the Court finds this motion appropriate for disposition without oral argument. After reviewing and considering the papers filed by the parties, the Court grants the motion to dismiss and adopts the following order.

I.Background

A. Factual Background

The plaintiff, Glenn Henderson ("Henderson"), was employed by Sony Pictures. According to Henderson, he was subjected to discrimination and retaliation, among other things, during his tenure at Sony Pictures. (Compl. At 1.) Henderson was fired from Sony Pictures on October 18, 2001. The defendant Local 174 of the Office and Professional International Employees Union (the "Union") filed a grievance on Henderson's behalf. (Id. At 2.) Henderson also attended two mediations set up by the EEOC. The Union allegedly did not assist Henderson in these mediations, and did not provide Henderson with an attorney. (Id. At 2-3)

The defendant Christine Page ("Page") allegedly told Henderson that she would speak to someone at Sony Pictures. Page later told Henderson that she spoke with a union representative and that the union filed a grievance. (Id. At 3.) Page allegedly told Henderson that she would help him get promoted, and. and never did. (Id.)

B. Plaintiff's Allegations

The Court clarifies the plaintiff's allegations against the Union and Page. (See mot. At 2-3.) The Court, construing the complaint in the light most favorable to the plaintiff, finds that the plaintiff pleads the following allegations:

(1)The Union did not help the plaintiff with his legal problems with Sony Pictures. Namely, the Union would not help the plaintiff find a lawyer to represent him in his legal action against Sony Pictures. (Compl. at 1, lns. 5-12.)

(2)The Union did nothing to help the plaintiff until he was fired by Sony Pictures on October 18, 2001, and then only filed a grievance. (Id. at 2, ins. 10-12.)

(3)Page told the defendant that she would help him get promoted, but never did. (Id. lns 15-18)

(4)The Union did not help the plaintiff in connection with discrimination charges he filed with the EEOC against Sony Pictures. (Id., lns. 22-25.)

(5) Page did not allow the plaintiff to speak with "the Union lawyers" before an EEOC mediation session, or offer to help with the mediation. (Id. at 2, ln. 25 – p.3, ln. 4.)

(6)The Union never told the plaintiff if it would help with arbitration. The plaintiff signed a settlement agreement regarding his termination which he considered a "bad deal." (Id. at 3, ln. 5-9.)

(7)The Union filed a grievance after the plaintiff was fired by Sony Pictures, but did not take further action. Page said "they did what they were required to do." (Id., lns. 9-14.)

B. Plaintiff's Claims

The plaintiff filed the instant claim against the Union and Page asserting causes of action for (1) business tort/unfair business practice, (2) fraud, (3) defamation, (4) discrimination, (5) retaliation, (6) jury duty violation, (7) corruption, (8) Freedom of Information Act ("FOIA") violation, (9) breach of contract, (10) harassment, (11) intentional and negligent emotional distress, (12) corruption, (13) theft of dues, (14) allowing a hostile work environment, (15) conspiracy to commit fraud and violations of civil rights, and (16) any misappropriation of funds. (Id. at 5.) On November 7, 2003, Henderson amended his complaint to include a whistle blower allegation. (Amended compl. at 1.)

II.Discussion

A. Legal Standard

Dismissal under 12(b)(6) is appropriate when it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations set forth in the complaint. Newman v. Universal Pictures, 813 F.2d 1519, 1521-22 (9th Cir. 1987). The court must view all allegations in the complaint in the light most favorable to the non-movant and must accept all material allegations – as well as any reasonable inferences to be drawn from them as true. North Star Int'l v. Arizona State Bd. Of Dental Exam'rs, 673 F.2d 272, 275-76 (9th Cir. 1982).

B. Application

1. Misdirected claims

Many of the causes of action alleged by the plaintiff are not supported by the plaintiff's allegations against the Union and Page. It appears that the plaintiff is pleading causes of action that relate to his treatment by Sony Pictures, who is not a defendant in this case, as opposed to only pleading causes of action against the Union and Page. For example, the second paragraph of the complaint states,

At Sony, I was lied about, defamed, retaliated against, denied Freedom of Information rights, denied jury duty rights..., and I believe retaliated against for whistle blowing to managers within the company... Sony committed perjury...My manager at Sony...was well-known as a liar...Other managers denied me promotions or job changes, and I believe I was discriminated against and retaliated against for questioning if there was discrimination...or questioning why I was denied promotions... I realized they lied and defamed me.

(Compl. At 2-3.) In this paragraph, Henderson alleges against Sony pictures defamation, retaliation, denial of jury rights, a violation of FOIA, and whistleblower retaliation. Nowhere else in the complaint does Henderson allege any facts that could support the inference that these rights were violated by the Union or by Page, instead of Sony Pictures. Thus, the Court Dismisses the plaintiff's claims for (1) business tort/unfair business practice, (2) fraud, (3) defamation, (4) discrimination, (5) retaliation, (6) jury duty violation, (7) corruption, (8) Freedom of

Information Act violation, (10) harassment, and the (amended) whistle blower allegation.

2. Preemption

a. Preemption by Section 301

The remaining claims against the Union and Page are for (9) breach of contract, (11) intentional and negligent infliction of emotional distress, (13) theft of dues, (14) allowing a hostile work environment, (15) conspiracy to commit fraud and violations of civil rights, and (16) misappropriation of funds. The defendants argue that these are state law claims that are preempted by federal law, and the only cognizable allegation pled by the plaintiff is for breach of fair representation, arising under 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. s185 (Mot. At 6.)

The first question the Court must address is whether federal labor law preempts the plaintiff's state law causes of action. Section 301 of the LMRA states that "[s]uits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce...or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties." 29 U.S.C. s 185(a). Although s 301 is a jurisdictional statute, the Supreme Court ruled that it authorizes federal courts to develop a federal common law for interpreting collective bargaining agreements ("CBA"0. Textile Workers' Union of Am. V. Lincoln Mills of Ala., 353 U.S. 448, 451 (1957). The Court subsequently held

that this federal common law preempts the use of state contract law in interpreting CBAs. Local 174, Teamsters of Am. V. Lucas Flour Co., 639 U.S. 95, 103-04 (1962); see also Cramer v. Consolidated Freightways, 255 F.3d 683, 689, (9th Cir. 2001).

In Allis-Chalmers Corp. v. Lueck, the Court extended the preemptive reach pf s 301 beyond breach of contract claims to state law tort claims when the tort claim was substantially dependent on the construction of the terms of a CBA. 471 U.S. 202 (1985). In International Brotherhood of Electrical Workers v. Hechler, the Court again extended preemptive force of s 301 to suits against a union. 481 U.S. 851 (1987). In Hechler, the Court held that an individual employee's state-law tort suit against her union for breach of union's duty of care must be treated as a claim under federal law, where the duty of care arose from the collective bargaining agreement. Id.

As the law currently stands, both claims founded directly on rights created by collective-bargaining agreements, and claims that are substantially dependent on the analysis of collective bargaining agreements are preempted by s 301. Caterpillar Inc. v. Williams, 482 U.S. 386 (1987); Consolidated Freightways, 255 F.3d at 689.

The Court thus considers whether the plaintiff's remaining claims are preempted by s 301. The Court assumes under the breach of contract claim, the plaintiff is asserting that the Union violated its duties to him under the CBA, because there is no allegation

of any other contract between the parties. An Alleged breach of the CBA necessarily requires the Court to analyze the CBA; thus the claim falls under s 301.

The plaintiff's claims for "theft of part of my dues and not giving me my benefits as promised" and "misappropriation of funds" also will require an analysis of the CBA to determine what dues the plaintiff was required to pay, and what obligations the Union and Page had toward the Plaintiff. Thus, these claims are also preempted by s 301.

The plaintiff's claim that the Union wrongfully allowed a hostile work environment also requires an analysis of the CBA to determine whether that agreement placed a duty on the defendants to ensure that the plaintiff was not subjected to a hostile working environment. "[Q]uestions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort. Allis-Chalmers Corp., 471 U.S. at 211. In United Steelworkers of America v. Rawson, the plaintiffs filed a wrongful death action against a union alleging that the union had acted negligently in ensuring mine safety. 495 U.S. 362, 369 (1990). The Court found that if the union did in fact have a duty to ensure mine safety, the duty necessarily arose from the CBA. The Court held that preemption by federal law cannot be avoided by characterizing the union's

allegedly wrongful behavior as a state law tort instead of a contract claim, and that the claim must be considered under federal law. Id. The same is true in the instant case. The Union certainly has no general duty to every person to ensure that workplaces are not hostile. Any duty that the Union had to the plaintiff must arise from the CBA. Thus, federal law preempts this claim as well.

Negligent infliction of emotional distress is the tort of negligence, requiring a duty and a causation. 6 Witkin, Summary of California Law at s 838. A person who has not created a peril usually is not liable for a tort merely for failure to take affirmative action to assist or to protect another. Id., at s 858. In the instant case, the plaintiff has alleged that the defendants failed to take certain actions to assist him (i.e., they did not provide him a lawyer, they did not help him get promoted). In order to determine if the defendants had a relationship with the plaintiff that gives rise to a duty to act, the Court would be required to consider the CBA. Thus, this claim is preempted by federal law.

Conspiracy to commit fraud is also preempted under s 301. Under California law, conspiracy is not a separate tort. 5 Witkin, Summary of California Law at s 44, p. 107. For conspiracy to be actionable, a wrongful act must be committed with resulting damage. Id. at s 45. As alleged in the complaint, fraud is the wrongful act. Fraud under California law requires (1) a misrepresentation, (2) knowledge of falsity, (3) intent to defraud, (4) reliance and (5)

damage. In the instant case, the only possible misrepresentations made by the plaintiffs are that Page told the defendant that she would help him get promoted (id., lns. 15-18); that after the Union filed a grievance, Page told the plaintiff that "they did what they were required to do" (id., lns. 9-14); and that the Union never told the plaintiff if they would help with arbitration (id., at 3, lns. 5-9). To determine whether these statements were false representations or material omissions, the Court must consider what obligations the defendants had toward the plaintiff. If the defendants had no obligation to help the plaintiff get promoted, to take action beyond filing a grievance, or to tell the plaintiff if they would help with his arbitration, the plaintiff can have no action for fraud. On the other hand, if the CBA imposes such a duty on the defendants, the plaintiff may have a cause of action for fraud. The claim is therefore preempted by the CBA.

The plaintiff's final claim is for (1) intentional infliction of emotional distress, and (2) conspiracy to commit violations of civil rights. It does not appear that these causes of action arise from the CBA between the plaintiff and the Union. Thus, the Court considers these claims below in Section Three: "Failure to State a Claim."

b. Duty of Fair Representation

The defendants argue that the case may not go forward even under federal law. They argue that the only cognizable claim made by the plaintiff is for breach of the duty of fair representation.

"It is now well established that, as the exclusive bargaining representative of the employees...the Union had a statutory duty fairly to represent all those employees, both in its collective bargaining...and in its enforcement of the resulting bargaining agreement." Vaca v. Sipe, 386 U.S. 171, 177 (1967). "Under this doctrine, the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, and to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." Id. The duty of fair representation is a matter of status rather than contract. Rawson, 495 U.S. at 373.

The Court stated in Rawson that "[w]e have never held, however, that, as a matter of federal law, a labor union is prohibited from voluntarily assuming additional duties to the employees (other than duty of fair representation) by contract." Id. For example, in Hechler, 481 U.S. at 861, the Court distinguished a s 301 breach of duty claim from a fair representation claim, and DelCostello v. Teamsters, 462 U.S. 151 (1983), the Court distinguished a s 301/duty-of-fair-representation claim before it from 'a straightforward breach-of-contract suit under s 301.'" See Hechler, 481 U.S. at 865, n.6 (quoting DelCostello, 462 U.S. at 165). However, the Court cautioned, :we also think it necessary to emphasize caution, lest the courts be precipitate in their efforts to find unions contractually bound to employees by collective-bargaining

agreements. The doctrine of fair representation is an important check on the arbitrary exercise of union power, but it is a purposefully limited check, for a "wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents.'" Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953). "If an employee claims that a union owes him a more far-reaching duty, he must be able to point to language in the collective-bargaining agreement specifically indicating the intent to create obligations enforceable against the union by the individual employees." Rawson, 495 U.S. at 374.

The question in this case becomes whether the allegations stated by the plaintiff give rise only to a "duty of fair representation" cause of action, or whether allegations assert that the collective bargaining agreement specifically created obligations enforceable against the Union by individual employees.

The allegations made by the plaintiff concern the Union's representation of him throughout his employment and subsequent termination with Sony Pictures. For example, the plaintiff alleges that Page told him that she would help him get promoted when he was at Sony, but never did. Furthermore, the plaintiff claims that the Union did not help the plaintiff with his legal problems with Sony Pictures until after he was fired, then only filed a grievance on his behalf, and did not provide him with an attorney. When the plaintiff filed with the EEOC, the Union did not provide him with assistance and did not

provide him with an attorney. These allegations assert that the Union did not properly represent the plaintiff. The plaintiff does not assert that the Union had any contractual duties to him outside of the collective bargaining agreement. Thus, the Court finds that the plaintiff is asserting that the Union and Page breached the duty of fair representation to him.

C. Statute of Limitations

The plaintiff filed his complaint on November 7, 2003. I he knew or should have known about the Union's alleged wrongdoing prior to May 7, 2003, then his claim is barred. The plaintiff alleges that he was fired on October 18, 2001. He states that the Union filed a grievance, and then Page told him they had done all they needed to do. Although the plaintiff does not allege the date of his conversation with Page, he filed a complaint against Sony Pictures on August 5, 2002 seeking, among other claims, employment restatement. By this time, he had clearly determined that the Union would not seek his reinstatement through the grievance procedure, and had moved on to other procedures for reinstatement of his employment. The complaint in the instant action was filed over one year after the filing of the complaint against Sony Pictures. Even assuming that this late date is actually when the plaintiff knew or should have known about the Union's wrongdoing, the filing of the instant complaint still misses the statute of limitations by approximately nine months.

The plaintiff also claims that the Union violated its duty to fairly represent him in EEOC proceedings.

In his complaint against Sony Pictures, the plaintiff alleges that the mediation took place in June 2001, over two years before he filed the instant suit. (See Def's Request for Judicial Notice, Ex. 1.) The duty of fair representation claims in the instant suit are barred on these grounds as well.

3. Failure to State a Claim

The Court still has not dealt with two of the plaintiff's claims. The Court, as explained below, finds that the plaintiff has failed to adequately plead causes of action for the intentional infliction of emotional distress, and for conspiracy to violate his civil rights.

a. Intentional Infliction of Emotional Distress

The plaintiff alleges intentional infliction of emotional distress. The Court finds the claim unsupported by the allegations in the complaint. "[A] cause of action for [intentional infliction of emotional distress] is established when it is shone that one, in the absence of any privilege, intentionally subjects another to the mental suffering incident to serious threats to his physical well-being, whether or not the threats are made under such circumstances as to constitute a technical assault.: State Rubbish Collectors Ass'n v. Siliznoff, 38 Cal. 2d 330, 336 (1952). The tort requires outrageous conduct, that which is beyond all bounds of decency; ordinary rude or insulting behavior is not enough. 5 Witkin, Summary of California Law, s 404, p. 484 (9th ed. 1988). Furthermore, the tort calls for intentional, or at

least reckless, conduct. Id. at s 405, p. 485. Omissions are not sufficient to support this cause of action. The plaintiff has alleged no actions by the Union or Page that are "outrageous" conduct. The allegations against the defendants are that they failed to assist the plaintiff with his complaints against his employer, not that the Union or page intentionally directed an action at the plaintiff that caused his emotional distress. Therefore, the Court dismisses the plaintiff's claim for intentional infliction of emotional distress with leave to amend.

b. Conspiracy to Commit Civil Rights Violations

It appears that the plaintiff is alleging the Union engaged in a conspiracy with its lawyers and/or Sony Pictures to deprive the plaintiff of his civil rights. This claim appears to give rise under 42 U.S.C s 1985, which provides:

> If two or more persons... conspire...for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws...the party so... deprived may have an action for the recovery of damages occasioned by such...deprivation, against any one or more of the conspirators.

42 U.S.C s 1985 (3).

The Ninth Circuit has held that a claim under s 1985 must allege facts to support the allegation that the defendants conspired together. "A mere allegation

of conspiracy without factual specificity is insufficient." Karim-Panahi v, Los Angeles Police Dept., 839 F.2d 621, 626 (9th Cir. 1988). A plaintiff must allege specific facts for the following elements:

> (1) a conspiracy; 2) for the purposes of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and 3) an act in furtherance of this conspiracy; 4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States....Further, the second of these four elements requires that in addition to identifying a legally protected right, a plaintiff must demonstrate a deprivation of that right motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirator's action."

O.H. v Oakland Unified Sch. Dist., 2000 WL 33376299, *8-9 (N.D. Cal.) (quoting Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1536 (9th Cir. 1992) (footnote omitted).

Thus, if the pleading fails to allege acts that meet the elements of a s 1985 claim or lacks any indication that the plaintiff was discriminated against because he is a member of a particular race or a suspect class, the plaintiff has failed to make out a claim under s 1985. Burns v. County of King, 883 F.2d 819, 821 (9th Cir. 1989).

In the instant action, the plaintiff has failed to allege facts sufficient to support a claim for conspiracy. He has not alleged facts that show any kind of agreement or concert of action between the defendants and any other party, and he has not he alleged any acts in furtherance of the conspiracy. In light of these pleading shortcomings, the Court dismisses this claim with leave to amend.

III. Conclusion

In light of the foregoing considerations, the Court (1) dismisses with leave to amend, the plaintiff's claims for business tort/unfair business practice, fraud, defamation, discrimination, retaliation, jury duty violation, corruption, Freedom of Information Act violation, harassment, and the (amended) whistle blower allegation, because they are directed at Sony Pictures, who is not a defendant in the instant lawsuit;

(2) dismisses, without leave to amend, the plaintiff's claim for breach of contract, hostile work environment, negligent infliction of emotional distress, and conspiracy to commit fraud, because these claims are preempted by s 301 of the Labor Management Act ("LMRA"), 29 U.S.C. s 185, and give rise to a claim of breach of duty of fair representation, which is barred by the statute of limitations;

(3) dismisses, with leave to amend, the plaintiff's claims for negligent infliction of emotional distress and conspiracy to commit civil rights violations,

because he failed to plead allegations to support these claims;
(4) grants the plaintiff thirty days from the date of this order in which to amend his complaint. Failure to comply may result in dismissal of this action.

IT IS SO ORDERED

Dated: 5-1304 (signed Dean D Pregerson)
DEAN D. PREGERSON
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 04-56068
DC No. CV 03-08082-DDP
Judgment

GLENN C. HENDERSON,
Plaintiff – Appellant

V.

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION; et al.,
Defendants – Appellees.

Appeal from the United States District Court for the Central District of California, Los Angeles.

On consideration whereof, it is now here ordered and adjudged by this Court, that the appeal in this cause be, and hereby is **DISMISSED for lack of jurisdiction**.

Filed and entered Tuesday, November 02, 2004

Stamped FILED CLERK, U.S. DISTRICT COURT, AUG - 3 2004 CENTRAL DISTRICT OF CALIFORNIA BY (unknown name) DEPUTY
Stamped ENTERED CLERK, U.S. DISTRICT COURT Aug-4 2004 CENTRAL DISTRICT OF CALIFORNIA BY (unknown initials) DEPUTY

Stamped: THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 03-08082 DDP (SHSx) ORDER GRANTING THE DEFENDANTS' MOTION TO DISMISS [Motion filed on 4/12/04]

GLENN C. HENDERSON,)
Plaintiff,)

V.

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, UNION LAWYERS, CHRISTINE PAGE,

Defendants)

The instant action is before the court on the defendants' motion to dismiss. After reviewing and considering the papers submitted by the parties, and hearing oral argument, the Court grants the motion to dismiss and adopts the following order.

I. Background

The plaintiff, Glenn Henderson ("Henderson"), was employed by Sony Pictures. According to Henderson, he was subjected to discrimination and retaliation, among other things, during his tenure at Sony Pictures. (Compl. At 1.) Henderson was fired from Sony Pictures on October 18, 2001. The defendant Local 174 of the Office and Professional International Employees Union (the "Union") filed a grievance on Henderson's behalf. (Id. At 2.) Henderson also attended two mediations set up by the EEOC. The Union allegedly did not assist Henderson in these mediations, and did not provide Henderson with an attorney. (Id. At 2-3)

The defendant Christine Page ("Page") allegedly told Henderson that she would speak to someone at Sony Pictures. Page later told Henderson that she spoke with a union representative and that the union filed a grievance. (Id. At 3.) Page allegedly told Henderson that she would help him get promoted, and, and never did. (Id.) Page informed Henderson

that this was all that the Union was required to do. (Id.)

B. Procedural Background

1. The First Complaint

The Court construed the first complaint as pleading certain allegations against the Union and Page:

(1) The Union did not help the plaintiff with his legal problems with Sony Pictures. Namely, the Union would not help the plaintiff find a lawyer to represent him in his legal action against Sony Pictures. (Compl. at 1, lns. 5-12.)

(2) The Union did nothing to help the plaintiff until he was fired by Sony Pictures on October 18 2001, and then only filed a grievance. (Id. at 2, lns. 10-12.)

(3) Page told the defendant that she would help him get promoted, but never did. (Id., lns. 15-18.)

(4) The Union did not help the plaintiff in connection with discrimination charges he filed with the EEOC against Sony Pictures. (Id., lns. 22-25.)

(5) Page did not allow the plaintiff to speak with "the union lawyers" before an EEOC mediation session, or offer to help in the mediation. (Id. at 2, ln. 25 – p.3, ln. 4.)

(6) The Union never told the plaintiff if it would help with arbitration. The plaintiff signed a settlement agreement regarding his termination which he considered a "bad deal." (Id. at 3, ln. 5-9.)

(7) The Union filed a grievance after the plaintiff was fired by Sony Pictures, but did not take further action.

Page said "they did what they were required to do." (Id., lns. 9-14.)

The plaintiff asserted the following causes of action against the Union and Page: (1) business tort/unfair business practice, (2) fraud, (3) defamation, (4) discrimination, (5) retaliation, (6) jury duty violation, (7) corruption, (8) Freedom of Information Act ("FOIA") violation, (9) breach of contract, (10) harassment, (11) intentional and negligent emotional distress, (12) corruption, (13) theft of dues, (14) allowing a hostile work environment, (15) conspiracy to commit fraud and violations of civil rights, and (16) any misappropriation of funds. (Id. at 5.) On November 7, 2003, Henderson amended his complaint to include a whistle blower allegation. (Amendment at 1.)

The defendants filed a motion to dismiss the plaintiff's claim, and on May 13, 2004, the Court granted the motion with leave to amend "5/13/04 Order"). Specifically, the Court granted the plaintiff leave to amend his claims for business tort/unfair business practice, fraud, defamation, discrimination, retaliation, jury duty violation, corruption, Freedom of Information Act violation, harassment, the (amended) whistle blower allegation, intentional and negligent emotional distress[1], and conspiracy to commit civil rights violations.

2. The Amended Complaint

The plaintiff filed an amended complaint pursuant to the Court's 5/13/04 Order ("First Amended Complaint" or "FAC"). In the FAC, the plaintiff sets

forth additional allegations regarding his claims for business tort/unfair business practice, fraud, defamation, sex and medical condition discrimination, retaliation, jury duty violation, corruption, Freedom of Information Act violation, harassment, allowing Sony to commit certain acts (including fraud, defamation, discrimination, retaliation, jury duty violation, perjury, 1st amendment violation, pay for work done violation, corruption, access to information violation, harassment, ~~and whistle~~ blower retaliation), negligent infliction of emotional distress[2], conspiracy, and jury duty violation.

[1] In the conclusion of the 5/13/04 Order, the Court mistakenly stated that the defendant was granted leave to amend his ~~claim for~~ negligent infliction of emotional distress ("NIED"). Previously in the order, the Court denied the defendant leave to amend the NIED claim, but granted him leave to amend the intentional infliction of emotional distress claim ("IIED"). The NIED claim is barred by the statute of limitations, thus, the Court will consider the plaintiff's amendment as alleging an IIED claim.

[2] The Court will consider this under the standard for IIED.

The defendant brought the instant motion to dismiss the plaintiff's claims, or, in the alternative, for a more definite statement.

II. Discussion

A. Legal Standard

Dismissal under 12(b) (6) is appropriate when it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations set forth in the complaint. Newman v. Universal Pictures, 813 F.2d 1519, 1521-22 (9th Cir. 1987). The Court must view all allegations in the complaint in the light most favorable to the non-movant and must accept all material allegations as – as well as any reasonable inferences to be drawn from them - as true. North Star Int'l v. Arizona Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983). The court need not accept conclusory legal assertions as true. Benson v. Arizona State Bd. Of Dental Exam'rs, 673 F.2d 272, 275-76 (9th Cir. 1982).

B. Application

In the 5/13/04 Order dismissing the plaintiff's claims, the Court dismissed many of the claims because they were misdirected at Sony, who is not a defendant in thus case, rather than at either the Union or Page, who are the defendants in this case. The Court then considered whether the remaining claims were preempted by s 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. s 185. The Court found that many of the remaining claims were preempted, and were barred by the statute of limitations. In his FAC, the plaintiff asserts his previously "misdirected" claims at the Union and Page. Thus, the Court now must consider whether these claims are preempted under either s 301 of the LMRA or the duty of fair representation.

1. Section 301 Preemption

Section 301 of the LMRA authorizes federal courts to develop a federal common law for interpreting collective bargaining agreements (CBAs). Textile Workers Union of Am. V. Lincoln Mills of Ala., 353 U.S. 448, 451 (1957). This federal common law preempts the use of state contract law in interpreting CBAs. Local 174, Teamsters of Am. V. Lucas Fluor Co, 369 U.S. 95, 103-04 (1962); see also Cramer v. Consol. Freighways, 255 F.3d 683, 689 (9th Cir. 2001). The preemptive reach of s 301 encompasses not merely breach of contract claims, but also tort claims that are substantially dependent on construction of the CBA. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985). It can also encompass suits against a union. Int'l Brotherhood of Elec. Workers v. Hechler, 481 U.S. 851 (1987) (individual employee's state-tort suit against her union for breach of the union's duty of care must be treated as a claim under federal law, where the duty of care allegedly arose from the collective bargaining agreement). As the law currently stands, both claims founded directly on rights created by collective bargaining agreements, and claims that are substantially dependent on the analysis of collective bargaining agreements are preempted by s 301. Caterpillar Inc. v. Williams, 482 U.S. 386 (1987); Consol. Freighways, 255 F.3d at 689.

When the resolution of a state law claim is substantially dependent upon analysis of the terms of a CBA, the claim must either be treated as a s 301 claim or dismissed as pre-empted by federal-contract

law. Allis-Chalmers , 471 U.S. at 220 (citing Avco Corp. v. Aero Lodge No. 715, 390 U.S. 557 (1968).

The Court considers whether the plaintiff's claims against the Union (which were previously asserted against Sony) must be treated as s 301 claims.

a. Unfair Business Practice

In his FAC, The plaintiff alleges, "I believe there was business tort/unfair business practice because I paid my dues, but I did not get the services promised." (FAC at 1.) The plaintiff states that it is not fair that the Union took other cases to arbitration, but not his. (Id.)

The defendants argue that the plaintiff's allegations make it clear that the plaintiff is actually asserting a breach of the duty of fair representation. (Mot. At 6.) The Court agrees.

The plaintiff is essentially arguing that because he paid his dues, the Union had a duty to provide the plaintiff with certain services, including taking the plaintiff's case to arbitration. This claim is dependent on whether the CBA requires the Union to take the plaintiff's case to arbitration because there is no general requirement that a union arbitrate all claims. "[Q]questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of the agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging a liability in tort'" Allis-Chalmers, 471 U.S. at 211. Here, the resolution of the plaintiff's claim requires an analysis

of the CBA to determine whether the Union had a duty to take the plaintiff's claim to arbitration. Thus, the claim is substantially dependent on the CBA, so the Court will treat the plaintiff's claim as a claim under s 301.

B. Fraud

The plaintiff claims that the union and Page committed fraud "by letting me believe I could not be punished or terminated without cause and then allowing those things to happen." (FAC at 1.) The plaintiff continued, "I believe it was fraud too when Christine Page told me the union had done what they were required to do... I believe it was fraud when Ms. Page said my written response to write-ups was my grievance." I believe it was fraud to claim the union did not have to let me speak with a lawyer, or at least someone at the union, about the issues involved at the second EEOC mediation." (Id. at 1-2)

The defendants argue that the plaintiff's fraud claim is preempted because it depends solely on the obligations of the defendants set forth in the collective bargaining agreement. (Mot. At 7.)

In its 5/14/04 Order, the Court considered the plaintiff's claim of conspiracy to commit fraud. The Court considered statements that the plaintiff claimed were fraudulent and held:

To determine whether these statements were false representations or material omissions, the Court must help the plaintiff get promoted, to take action beyond filing a grievance, or to tell the plaintiff if they would help with his arbitration, the plaintiff can have no

action for fraud. On the other hand, if the CBA imposes such duty on the defendants, the plaintiff may have a cause of action for fraud. This claim is therefore also preempted by the CBA.
(5/14/04 Order at 9.)

The plaintiff's amended claim for fraud is subject to the same analysis. Fraud requires (1) a misrepresentation, (2) knowledge of falsity, (3) intent to defraud, (4) reliance, and (5) damage. Watkin, Summary of California Law, at s-676, p. 778. The alleged fraudulent misrepresentations made by the defendants are that (1) they let the plaintiff believe that he could not be punished or terminated without cause, and then let those things happen; (2) Page told the plaintiff that the Union had done all that it was required to do; (3) Page told the plaintiff that his written response was his grievance; (4) the Union claimed that it did not have to let the plaintiff speak with a lawyer or other union official regarding the second EEOC mediation. (FAC at 1-2.)

Here, as stated in the 5/13/04 Order, whether the statements were misrepresentations (the first element of fraud) depends on whether the defendants had a duty to protect the plaintiff from being terminated without cause, to do more than they had done in dealing with the plaintiff's grievance, or to let the plaintiff speak with a lawyer or union official regarding his second mediation. If the defendants had such duties, informing the plaintiff otherwise would be false. The defendants argue that if such duties exist, they would be set forth in the CBA, because the

Union has no general duty to help even non-union employees with their grievances. The Court finds that if such duties exist, they appear to arise from the CBA. See United Steelworkers of America v. Rawson, 495 U.S. 362, 369 (1990) (The plaintiff filed a wrongful death action against a union alleging that the union had acted negligently in ensuring mine safety. In finding that the claim was preempted, the Court found that if the union did in fact have a duty to ensure mine safety, the duty necessarily arose from the CBA.) Thus, the fraud claim is dependent on the analysis of the CBA, and is preempted by federal law. The Court will treat this claim as a claim under s 301.

C. Discrimination & retaliation.

The plaintiff alleges that the Union discriminated against him when it dismissed his allegations of discrimination against Sony. "I believe the union dismissed my allegations of discrimination and retaliation by Sony and thought of it as excuse making on my part; I believe this in turn is discrimination and retaliation by the union. The union retaliated by not helping me, by not looking at and checking the evidence, and by ignoring me." (FAC at 3.) The plaintiff alleges that he was discriminated against because he is "reserved" and is "not thought of [as] having the assertiveness and some other characteristics of a male that some people think [he] should have." (Id.) Additionally, he has a medical conditions including depression, anxiety

disorder, and post traumatic stress syndrome. (Opp. At 1:)

To prevail on this claim, the plaintiff must first establish a prima facie case of discrimination, I:e. that he is a member of a protected class, that he was entitled to customary rights and advisements due union members, and that other employees with similar qualifications were treated more favorably. Madison v. Motion Picture Set Painters & Sign Writers Local 729. 132 F. Supp. 2d 1244, 1253 (C.D. Cal. 2000) (citing Barber v. Int'l Brotherhood of Boilermakers, etc., District Lodge No. 57, 778 F.2d 750, 756 (11th Cir. 1985).

The plaintiff's prima facie case will require interpretation of the CBA, since he appears to assert the Union dismissed his claim and retaliated against him based on his personality and medical condition, whereas the union did not dismiss other members' claims. Proof of this claim will require the Court to examine the CBA to determine the standards the Union must use in determining whether to proceed with or dismiss a member's claim against an employer. Madison, 132 F. Supp. 2d at 1253). Thus, this claim is preempted under s 301.

.D. Harassment

The plaintiff's claim for harassment states, "I believe I was harassed by the union because Ms. Page said she would do things and then did not." (FAC at 3). "Also, when Ms. Page said the union did not have to help me with arbitration, it was like saying sit there and worry and wonder what we might

do." (Id. at 3-4.) The plaintiff clarified in his opposition: "At first I thought the union would help me and had an obligation to help me, but Ms. Page told me differently in February of 2002. I was led to believe the union was behind me, and also, I was counting on them to help me. Giving me the brush off was stressful, and I believe, harassing." (Opp. At 2.)

The defendants argue that the plaintiff is essentially claiming that the Union failed to take adequate action on his behalf with respect to the problems he was encountering at Sony, and that such action was "harassing." (Reply at 5.)

The plaintiff's claim asserts that the Union and Ms. Page failed to assist him as they should have. The Court finds that this claim falls under s 301 because it requires the Court to evaluate the obligations of the Union in its representation of the defendant. The plaintiff's claim for harassment cannot stand if the Union did all that it was obligated to do. Thus, the Court finds that this claim is preempted by s 301.

E. As a Party to Certain Acts

The plaintiff states, "Also, in my complaint, I meant Sony committed fraud, defamation, discrimination, retaliation, jury duty violation, corruption, access to information violation, harassment, and whistle blower retaliation, and the union was a party to this by allowing these things to happen." (FAC at 4.) The Court has addressed (or will address below) the claim for fraud, defamation, discrimination, retaliation, access to information

violation and harassment. The plaintiff's claim that the defendants were party to a jury duty violation, perjury, first amendment violations, pay for work due violations, and whistle blower violations must now be addressed. As to these claims, the plaintiff's allegation is that the Union had a duty to stop Sony from committing violations of his rights. (See id.,; Opp. At 3-4.)

The court finds that these claims are preempted by s 301. The gist of the plaintiff's complaint is that the Union should have stepped in and helped him when Sony was allegedly violating his rights. As stated before, the Union's obligations to the plaintiff are encompassed in the CBA. Thus, these claims require an analysis of the CBA, and are therefore preempted.

E. Statute of Limitations

Section 301 claims are governed by a six-month statute of limitations. Madison v. Motion Picture Set Painters & Sign Writers Local 729, 132 F. Supp. 2d 1244, 1261, (C.D. Cal. 2000) (citing Audette v. Int'l Longshoremen's and Warehousemen's Union, 195 F.3d 1107, 1113 (9th Cir. 1999) (upholding the district court's grant of summary judgment on the basis that the "six month statute of limitations governing actions under s 301 of the LMRA" applied).

The plaintiff filed his complaint on November 7, 2003. As the Court found in its 5/13/04 Order, the plaintiff clearly knew of the Union's alleged wrongs by the time he filed his complaint against Sony Pictures on August 5, 2002.[3] Since more than six

months elapsed between August 5, 2002, and when the plaintiff filed his complaint, the s 301 claims are barred.

2. Duty of Fair Representation

Other claims of the plaintiff are preempted by the duty of fair representation. Section 9(a) of the National Labor Relations Act authorizes a union to act as the exclusive agent for its members in bargaining with the

[3] In the 5/14/04 Order, the Court held: The plaintiff filed his complaint on November 7, 2003. If he knew or should have known about the Union's alleged wrongdoing prior to May 7, 2003, then his claim is barred.

employer. The Court finds that the plaintiff's claim is barred. The plaintiff alleges that he was fired by Sony on October 18, 2001. He states that the Union filed a grievance, and then Page told him they had done all they needed to do. Although the plaintiff does not allege the date of his conversation with Page, he filed a complaint against Sony Pictures on August 5, 2002 seeking, among other claims, employment reinstatement. By this time, he had clearly determined that the Union would not seek his reinstatement through the grievance procedure, and had moved on to other procedures for reinstatement of his employment. The complaint in the instant action was filed over one year after the filing of the complaint against Sony Pictures. Even assuming that this late date is actually when the plaintiff knew or

should have known about the Union's alleged wrongdoing, the filing of the instant complaint still *misses the statute of limitations by approximately* nine months..
(5/14/04 Order at 12.)

employer. See 29 U.S.C. s 159(a). "The exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, and to exercise its discretion with complete good faith and honesty, and to avoid any arbitrary conduct." Vaca v. Sipes, 386 U.S. 171, 177 (1967). The duty of fair representation applies to all representational activity in which the union engages, including the negotiation, administration, and enforcement of collective bargaining agreements. Int'l. Brotherhood of Elec. Workers v. Foust, 442 U.S. 42, 47 (1991). When administering arbitration and grievance procedure, the duty of fair representation requires the union to act "in good faith and in a no arbitrary manner" in making "decisions as to the merits of a particular grievance." Vaca, 386 U.S. at 194.

The duty of fair representation completely preempts state law, and, thus, state law claims challenging a union's representational activities must be recharacterized under the artful pleading doctrine as arising under federal law. See BIW Deceived v. Local 86, Industrial union of Marine and Shipbuilding Workers of America, 132 F.3d 824 (1st

Cir. 1997); Jones v. Truck Drivers Local Union No. 299, 838 F.2d 856, 861 (6th Cir. 1988); Madison, 132 F. Supp. 2d at 1256 (C.D. Cal.); Cash v. Chevron Corp., 162 L.R.R.M. 2892, 2894 (N.D. Cal. 1999).

The Court now considers whether the plaintiff's remaining claims against the Union (which were previously asserted against Sony) must be treated as duty of fair representation claims.

4. Defamation

The plaintiff asserts, "[The union was] saying, at least in effect, that I was such a bad employee that they would not bother helping me. They were also saying, at least in effect, that I was a liar and my supervisor was telling the truth about me, even though I claimed my supervisor was lying." (FAC at 2.) In his opposition, the plaintiff adds, "In a grievance letter to Sony, Ms. Page stated that she thought I had improved. That statement meant she believed I was, in fact, performing poorly and I needed to improve; that was not the case." (Opp. At 1.)

The defendants argue that the plaintiff fails to state a claim for defamation, and that this claim is really charging that the Union credited the plaintiff's supervisor's version of events over the plaintiff's version. (Mot. At 8.)

The Court finds that the plaintiff has not stated a claim for defamation. Defamation is the publication of defamatory matter to a third person who understands its defamatory meaning and its application to the plaintiff. 5 Witkin, Summary of

California Law (1998), s 476. The matter must have a defamatory character. California Civil Code s 46 defines slander as false and unprivileged publication... which... #[3] rends to injure [a person] in respect to his office, profession, trade or business, either by imputing to his general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits." Cal. Civil Code s 46; 5 Witkin, supra, s 489.

Here, the plaintiff asserts that the defendant credited a version of events that was different from his own. The Court finds that this is not defamation because it is not "publication of defamatory matter." The plaintiff also claims that by saying that the plaintiff had improved, Ms. Page necessarily defamed the plaintiff because the statement implied that he previously had not been performing adequately. (Opp. At 1.) The Court disagrees with this analysis as well. A defamatory statement must injure the person's reputation or good name. A letter stating that someone's work has improved has the opposite effect of benefiting a person's reputation or good name. The Court will not stretch the defamation law to include comments merely because they imply that at a previous time, the plaintiff was not as good as he was at the time the compliment was given.

The plaintiff's defamation claim does not state a cause of action for defamation. It does not appear to require an analysis of the CBA to resolve. To the

extent that the plaintiff's allegation that the Union credited the supervisor's story over his own story states any claim, it is a claim for the breach of the duty of fair representation. The gravamen of the allegation appears to be that the Union did not act in good faith by crediting the supervisor's story over the plaintiff's story when addressing the plaintiff's grievance. This arguably states a claim for breach of duty of fair representation. See Vaca, 386 U.S. at 194 (when administering grievance procedures, the duty of fair representation requires the union to act in good faith in making decisions as to the merits of particular grievances).

B. Freedom of Information Act

The plaintiff states that "Ms. Page promised to get me information[of Sony policies or procedures that Kim Russo said I had violated], and I believe this was a promise that was not necessarily in the collective bargaining agreement. I would have liked to have had that information regardless of whether or not the union helped me.") Opp. At 2; FAC at 3.)

The Court finds that the plaintiff does not state a Freedom of Information Act ("FOIA") claim. FOIA establishes the conditions under which government agencies "shall make available to the public information" and the methods by which the government agencies shall supply such information. TPS, Inc. v. United States Dept. of Defense, 330 F.3d 1191, 1192 (9th Cir. 2003) (quoting 5 U.S.C. s 552). The plaintiff did not request information from any government agency. Thus, the claim is dismissed.

To the extent that the plaintiff is claiming that Page failed get information for the plaintiff, the Court finds that the plaintiff's claim is for breach of the duty of fair representation. It is the Union's duty to serve the interests of all, and not act in an arbitrary, hostile, or dishonest manner toward any member. See Vaca, 386 U.S. at 177. Here, the plaintiff alleges that Page acted dishonestly toward him when she failed to provide needed information. The Court finds that this claim is for breach of the duty of fair representation.

C. Statute of Limitations

The statute of limitations for breach of duty of fair representation is six months. 29 U.S.C s 160(b); DelCostello, 462 U.S. at 154-55. The statute of limitations starts to run when a plaintiff "knew or should have known, of the defendants' wrongdoing." Allen v. United Food & Commercial Workers Int'l, 43 F.3d 424, 427 (9th Cir. 1994).

As with the claims under s 301, the claims under the duty of fair representation are barred.

3. Failure to State a Claim

Pursuant to the 5/13/04 Order, the plaintiff was also given leave to amend two claims that the Court found were not preempted by s 301. The first claim is for intentional infliction of emotional distress ("IIED"); the second claim is for conspiracy to commit civil rights violations.

A. Intentional Infliction of Emotional Distress

The plaintiff asserts that Page "did not do what she said and also left me sitting there not knowing what the union was going to do. She never told me

the union would not help me." (FAC at 4.) Page did not request certain documents that she told the plaintiff that she would request, she did not help the plaintiff get promoted, she let too much time go between phone calls, and when she did return plaintiff's phone calls, she would not leave messages answering his questions. (Id. at 5-6.) Additionally, the plaintiff alleges, "Page told me not to worry about the fact that Kim Russo had lied." (Id. at 4).

The Court finds that the plaintiff has still failed to allege a claim for IIED.[4] "[A] cause of action for IIED

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[4] The plaintiff's allegations also fail to state a cognizable claim for negligent infliction of emotional distress ("NIED"). In the Court's 5/14/04 Order, it found that the plaintiff's NIED claim was preempted by s 301:

Negligent infliction of emotional distress is the sort of negligence requiring a duty and causation. 6 Witkin Summary of California Law at s 838. A person who has not created a peril usually is not liable for

a tort merely for failure to take affirmative action to assist or to protect another. Id. at s 858. In the instant Case, the plaintiff has alleged that the defendants failed to take certain actions to assist him (I.e., they did not provide him with a lawyer, they did not help him get promoted). In order to determine if the defendants had a relationship with the plaintiff that gives rise to a duty to act, the Court would be

required to consider the CBA. Thus, this claim is preempted by federal law.
(5/14/04 Order at 8.) In the FAC, the plaintiff alleges that Page and the Union failed to act, or failed to act quickly enough. The defendants' duty to the plaintiff in these regards depends on the construction of the CBA. Thus, the plaintiff's NIED claim is preempted.

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is established when it is shown that one, in absence of any privilege, intentionally subjects another to the mental suffering incident to serious threats to his physical well-being, whether or not the threats are made under circumstances as to constitute an actual assault." State rubbish Collectors Ass'n v. Siliznoff, 38 Cal. 2d 330, 336 (1952). The tort requires outrageous conduct, that which is beyond all bounds of decency; ordinary rude or insulting behavior is not enough. 5 Witkin Summary of California Law, s 404, p. 484 (9th ed. 1988). Furthermore, the tort calls for intentional, or at least reckless, conduct. Id. s 405, p. 485. Omissions are not sufficient to support this cause of action.

The only allegations of conduct (not omissions) on the part of the defendants are that Page told him not to worry that Kim Russo had lied. This is not "outrageous" conduct. The other allegations against the defendants are that they failed to assist the plaintiff with his complaints against the employer. There are no allegations that the Union or Page intentionally directed action at the plaintiff that caused his emotional distress. Therefore, The Court

dismisses the plaintiff's claim for intentional infliction of emotional distress.

B. Conspiracy to Commit Civil Rights Violations

The plaintiff's FAC alleges that "I have evidence that Ms. Page spoke with the union lawyers, with at least one person at Sony, and with the EEOC. After they looked at the facts that they all had, I do not believe that any of these people could have possibly concluded that Sony did nothing wrong."

In its 5/14/04 Order, the Court assumed that the plaintiff was making his claim under 42 U.S. U.S.C. s 1985, which provides:

If two or more persons...conspire...for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or the equal privileges and immunities under the

laws...the party so... deprived may have an action for the recovery of damages occasioned by

such...deprivation, against any one or more of the conspirators.

42 U.S.C. s 1985(3). A claim under s 1985 must allege specific facts to support the allegation that the defendants conspired together. Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 626 (9th Cir. 1988). A plaintiff must also specifically allege an act in furtherance of the conspiracy. O.H. v. Oakland Unified Sch. Dist., 2000 WL 33376299, *8-9 (N.D. Cal.) (quoting Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1536 (9th Cir. 1992) (footnote omitted).

The plaintiff has failed to plead with sufficient factual specificity. The only evidence of an agreement is that Ms. Page spoke with union lawyers, with someone at Sony, and with the EEOC. Evidence that she spoke with these people in no way indicates that Page agreed to conspire. The plaintiff also alleges no acts in furtherance of the conspiracy. In light of these considerations, the Court dismisses the plaintiff's claims.

III. Conclusion

The Court does not grant the plaintiff leave to amend. The majority of the claims are preempted by s 301 of the LMRA, or by the duty of fair representation, and statute of limitations bars these claims. The plaintiff's remaining claims of IIED and conspiracy are also dismissed without leave to amend. The plaintiff has been given leave to amend once already, and fails to allege facts that would remotely give rise to a claim for IIED or conspiracy.

In light of the foregoing considerations, the Court grants the defendants' motion to dismiss.

IT IS SO ORDERED.

Dated: 8-3-04

(signed)

Dean D. Pregerson

United States District Judge

FILED
JUN 22 2005
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GLENN C. HENDERSON	]	No. 04-56646
Plaintiff-Appellant	]	D.C. No. CV-03-
	]	08082-DDP
	]	
V.	]	
VI.	]	MEMORANDUM*
	]	
OFFICE AND PROFESSIONAL	]	
EMPLOYEES INTERNATIONAL UNION; et al.	]	
	]	
Defendants -Appellees	]	

Appeal from the United States District Court
For the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted June 14, 2005**

Before: KLEINFELD, TASHIMA, and THOMAS, Circuit Judges

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by the Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Glenn C. Henderson appeals pro se the district court's order dismissing his action against his former union, and union representative, alleging breach of the duty of fair representation and various state law claims. We have jurisdiction pursuant to 28 U.S.C. s 1291. We review de novo. *Nicholas v. Greyhound Lines, Inc.*, 173 F.3d 1207, 1211 (9th Cir. 1999), and we affirm.

The district court properly concluded that Henderson's claims for breach of contract, theft of dues, and misappropriation of funds are preempted by the Labor Management Relations Act, 29 U.S.C. s 185(a)("LMRA") because the claims are substantially dependent on an interpretation of the collective bargaining agreement. *See Beals v. Kiewit Pacific Co., Inc.*, 114 F.3d 892, 894-95. (9th Cir. 1997); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 210-11 (1985).

The district court properly concluded that Henderson's duty of fair representation claim is barred by the six-month statute of limitations, as the claim accrued by February of 2002, the date Henderson acknowledged in his opposition to the motion to dismiss that the union would no longer assist him, and Henderson filed his complaint in the instant action over one year later. *See Stone v. Writer's Guild of America West, Inc.*, 101 F.3d 1312, 1314 (9th Cir. 1996); *Galindo v. Stoody Co.*, 793 F.2d 1502, 1509 (9th Cir. 1986) (finding that in a duty of fair representation case, the six month limitations period begins to run when the employee knew or should have known of the alleged breach of the duty of fair representation by his union).

The district court properly concluded that Henderson's claim for negligent infliction of emotional distress is preempted by the LMRA. *See Newberry v Pacific Racing Ass'n*, F.2d 1142, 1149-50 (9th Cir. 1988).

The district court properly concluded that Henderson's claim for defamation was preempted by the LMRA. *See Shane v. Greyhound Lines, Inc.*, 868 F.2d 1057, 1063 (9th Cir. 1989).

The district court properly concluded that Henderson's claim for conspiracy to commit fraud was preempted by the LMRA. *See Aguillera v. Pirelli Armstrong Tire Corp.*, 223 F.3d 1010, 1017 (9th Cir. 2002) (holding that preemptive force of LMRA extends to claims when resolution of claims is inextricably intertwined with terms in labor contract).

The district court properly concluded that Henderson's claim that the union engaged in unfair business practice because the claim required an analysis of the collective bargaining agreement. *See Id.*

Henderson's claims for discrimination and retaliation were properly dismissed because he failed to state a claim. *See Humphrey V. Memorial Hospitals Ass'n*, 239 F.3d 1128, 1133 (9th Cir. 2001) (describing prima facie 4elements for discrimination claim under the California Fair Employment and Housing Act ("FEHA"); *Payne v. Northwest Corp.*, 113 F.3d 1079, 1080 (9th Cir. 1997) (stating prima facie elements for retaliation under the FEHA).

Henderson's claims for a hostile working environment was properly dismissed because he failed to state a claim. *See Kang v. Lim Am Inc.*, 296 F.3d 810, 817 (9th Cir. 2002) (stating the elements of a hostile working environment under Title Vii); *Brooks v. City of San Mateo*, 229 F.3d 917, 923 (9th Cir. 2000) (stating that Title VII and FEHA operate under the same guiding principles).

The district court properly dismissed Henderson's conspiracy claim because he failed to state a claim. *See Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 626 (9th Cir. 19880 (noting that("[a] mere allegation of conspiracy without factual specificity is insufficient").

The district court properly dismissed Henderson's claim for intentional infliction of emotional distress because he failed to allege that the conduct

defendants engaged in was extreme and outrageous as a matter of law. *See Braunling v. Countrywide Home Loans Inc.*, F3.d 1154, 1158 (9th Cir. 2000).

The district court properly dismissed Henderson's First Amendment claim because defendants are not state actors. *See Geoarge v. Pacific-CSC Work Furlough*, 91 F.3d 1227, 1229 (9th Cir. 1996) (per Curium).

Finally, the district court properly dismissed Henderson's claim under 5 U.S.C. s 552 (a)(4)(B) of the Freedom of Information Act because defendants are not "agencies" and therefore cannot be held liable under FOIA. *See* 5 U.S.C ss 552 (a)(4)(B); 551(1).

AFFIRMED.

PETITION FOR REHEARING

I would like to petition for rehearing.

Filed by Glenn Henderson, Plaintiff Pro Se
409 S. Manhattan Pl. #25
Los Angeles, CA 90020
213-427-0679

Case Information:
Case No. 04-56646
The United States Court of Appeals for the Ninth District
Casa Name: Glenn C. Henderson v. Office and Professional Employees

International Union, Christine Page, Union Lawyers
Appealing from the United States District Court for the Central District of California, The Honorable Dean D. Pregerson, District Judge, Presiding

Statement of Counsel

believe a material point of law was overlooked. The point was not really addressed. I would like to have the point addressed. It was my main point in my appeal. The Labor Management Relations Act says that the six months statute of limitations starts running when I know or should know that the union has done something wrong or has breached its duty of fair representation. I never knew that, and I still do not. The district court says that the plaintiff should be believed and treated in the most favorable way. A court should not claim I knew the union had done something wrong when I say I did not. I filed a district court complaint against the EEOC for not helping me in a way that I thought was fair. I filed that just before one year after they told me they would not be helping me any more. That case was almost exactly like my case against the union. I would have filed against the union at least by August 2003 if I had known or thought the union had done something wrong. I signed a settlement with my union in August 2002, so I was reasonably sure that the union would not help me after that. I may have filed one year my after termination at the earliest. I was not aware of LMRA and the six months statute

of limitations. The only argument would be or should be to say I should have known the union did something wrong. I strongly disagree that I should have known and no one has given an argument why I should have known the union did something wrong. The appeals court, district court, and defendants have all argued that the statute of limitations began sometime in 2002 when I knew or should have known the union would not be helping me, but that is not the equivalent of knowing the union did something wrong. Not helping someone is not necessarily doing something wrong. I believe the lawmakers must have written the law to make sure an employee realizes the wrong, or that a reasonable person would realize it, before the statute of limitations begins to run. No one has made an argument that a reasonable person would know the union did something wrong in my situation. My main point in my appeal has been is that I disagree that I knew or should have known that the union did something wrong.

I believe a fact has been overlooked or not really addressed. In February 2002, the union representative, Ms. Page, told me that the union had done all it was required to do. I believed her, so I did not and still do not know if the union did anything wrong. I would like for the rehearing panel to address this statement made by the union and explain why I should not have believed her or state it was okay to believe her. The appeals court states that I knew the union would no longer assist me in February 2002,

but I did not know or believe that then. I was saying I believed the union did not have to help me any more. After filing my cases against the union, the union's lawyer said that I was treated fairly. I spoke with some lawyers before August 2002, and in August 2002, I still believed the union had done all it was supposed to do. I think I did reasonable inquiry. It seems that the district court, appeals court, and defendants had to be thinking that Ms. Page was lying, although no one has stated that. If she were lying, then that was fraud. I do not believe the law says that a person can be told he/she should have known there was fraud at the time of the fraud and maybe later, which is unlike LMRA. I do not understand why the courts dismissed the fraud issue even if it dismissed all fair representation issues. I have a document that states that Ms. Page said that she told me in February 2002 that the union had done all it was required to do. I did not have that document when I filed my appeal briefs.

I do not understand about my not stating a claim regarding discrimination, retaliation, hostile work environment, and conspiracy. I thought I had, but I guess I do not understand what I needed to do. I do not understand how my allegations of the union's not helping me and letting my job get taken, my well being get taken, and my career get badly harmed cannot be alleging extreme and outrageous behavior. My real concern is this request for rehearing is about deciding when I knew or should have known the union did something wrong.

I do not believe that I would get my due process rights guaranteed by the constitution if I did not get my points addressed.

En Banc Consideration

I suggest a hearing en banc. The issues here are of extreme importance at least to me. I believe it is of extreme importance for everyone, to know what one is required to believe, think, and/or know or should think, believe, and/or know. I believe due process is of extreme importance to everyone.

Signed:

_____(signature)_____ Dated: _(7/6/06)____

Appeal No. 05-56646

United States Court of Appeals
Ninth Circuit

Glenn Henderson
Plaintiff-Appelant

v.

Office and Professional Employees International Union, Christine Page, Union Lawyers
Defendants-Appellees

Appeal from United States District Court
Central District of California
Honorable Dean Pregerson, Judge
Case. No. CV 03-08082-DDP (SHSx)

Appellant's Response to Appellees' Answering Brief

Glenn Henderson, Plaintiff
409 S. Manhattan Pl. #25
Los Angeles, CA 90020
213-427-0679

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Response to Defendants Statement of the Case

I never stated that in February 2002 that I knew the union would not be assisting me any further. I stated that Ms. Page told be the union had done what they were required to do and that the union did not have to help me with arbitration. Neither Ms. Page nor anyone else ever told me the union would not be helping me with my case. I have never explicitly been told by anyone that the union did anything wrong. The court stated I knew or should have known that the union was not going to help me. Saying that is not the same as saying the union did something wrong. So, actually the statute of limitations has not started running id it starts when I first know the union did something wrong. Someone would have to argue I should know or should have known the union did something wrong.

Response to defendants' Statement of the Facts

I agree that main part of my complaint is that the union did not do enough to help me.

A. My Initial and Amended Complaints:

I never said Ms. Page told me the case could not be won and that the union should not pursue arbitration. I have always stated that Ms. Page told me that she filed a grievance. I was very glad that she did.

Response to Defendants' Summary

My main point is that I did not know, at the time I filed my original complaint in district court, that the union had done anything wrong according to the law. If possible, I hope the court will tell me if I did anything wrong or if they did what they were required to do. In August 2002, I filed a court action against Sony in district court because I was considering taking a settlement offer from Sony in state court and not because I thought the union would not help me. I wanted the complaint filed before I signed any settlement for the state court case. The union argues that I should have known that the union would not help me in August 2002 and not that I should have known that the union did something wrong. The union seems to be saying or implying that knowing the union would not help me is the same as knowing the union did something wrong. I strongly disagree that that is true; this is the main point of my appeal.

I did not allege that because I felt injured that there must have been intent and a conspiracy to injure me. I alleged these things because of the evidence and not because I felt injured. I do believe it is hard to show or to know there is conspiracy without knowing what is actually said between two parties.

I felt I was defamed by the union. Maybe, another way or a better way to have put it would have been to say my reputation was hurt by the union. I am not sure if defamation must be explicitly stated or can be implicit. I would like to ask the appeals court if defamation can be implicit or only explicit.

Response to Defendants' Argument

B. On page 25 of the defendants' brief, they claim I stated time and time again that Page told" me "the Union had decided not to pursue" my "grievance any further by February 2002." I have never said that, and Ms. Page never told me that. Ms. Page told me the union did not have to help me with arbitration, but she never said they would not. Even if she had said that, that would not have meant that I knew it was wrong for the union not to help me. I believed Ms. Page when she said the union had done all it was required to do. In that same conversation, Ms. Page said the union would have to consider the costs And whether they thought my case could be won; that statement clearly meant to me that the union was still considering helping me further. I agree that when I signed the settlement with Sony in August 2002 that the union would probably not help me after that.

F. Discrimination Issue

I believe that the union allowed Sony to discriminate and also the union discriminated against me on the basis of medical condition, age, and sex. My medical condition of anxiety, depression, and post traumatic stress syndrome may be a disability. I am not considered very assertive, and I believe unassertive males (and females) are sometimes not treated fairly because of it. I also have evidence of Ms. Page helping a younger employee in a situation similar to mine.

H. Defamation Issue:

My defamation (or harm to reputation) complaint stems from before the grievance as well as after it.

H. Freedom of Information

I wanted the union to have Ms. Russo (my supervisor at Sony) show evidence of policies and procedures that she claimed were in place and that I claimed were not. I believe the union should not have allowed me to be punished for any claims made by Ms. Russo that she could not show evidence of and that I disputed. It is unbelievable to me that the union allowed me to be punished and terminated for any issues that Mrs. Russo could not show verifiable evidence for and that I disputed. At Sony, Mrs. Russo was well known as a liar and a harasser. Several witnesses could have corroborated that. I am thinking that maybe I should have called getting documentation as something like the right to know instead of a Freedom of Information issue if FOIA applies only to government agencies.

I. I am glad that the union met with the employer and the EEOC. It is just baffling to me that anyone can conclude the employer, and especially Mrs. Russo, did no wrong, if a good faith effort is made to look at the evidence. I am not sure Ms. Page or anyone at the union talked with the lawyers.

Plaintiff's Conclusion

I hope that this case will not be dismissed. The main reason is because when I filed the complaint, I did not know if the union had done anything wrong. I still do not know.

(signed) 2/11/05

Appeal No. 04-56068

United States Court of Appeals
Ninth Circuit

Glenn Henderson
Plaintiff-Appelant

v.

Office and Professional Employees International Union, Christine Page, Union Lawyers
Defendants-Appellees

Appeal from United States District Court
Central District of California
The Honorable Dean Pregerson
Case. nos. CV 03-08082-DDP (SHSx)

Appellant's Response to Appellees' Answering Brief

Glenn Henderson, Plaintiff

409 S. Manhattan Pl. #25
Los Angeles, CA 90020
213-427-0679

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Response to Appellees' Answering Brief

My appeal is based on the idea that I did not know that the union had done anything wrong before I filed my complaint against the union and Mrs. Page. Believing they would not help me and knowing they had done wrong are two different things. To this day, I do not know for sure that they did wrong. I believe they did. Mrs. Page told me they did all they were required to and did not have to help me with arbitration. I believed her when she told me that. The defendants seem to be admitting they did wrong, but I cannot say for sure. They seem to claim that I knew or should have known they would not help, and that is the equivalent to I knew or should have known they did wrong. I disagree. I never knew they would not help, although I will say I did not expect them to after I settled with Sony, my ex-employer. I am waiting and hoping to officially hear from the court if they did wrong.

Response to Appellees' No. V.A.

Mrs. Page told me on the same day and in the same conversation that the union did not have to help me with arbitration and had done all they were required to do. After saying they did not have to help me with arbitration, she said they would consider it.

Response to Appellees' No. VI

I wrote that I believed the union did not help me enough when and after I filed my court complaints against the union and Mrs. Page, but I never said or wrote that before then. I still believe they did not help me enough, but I do not know that.

I filed my federal complaint against Sony because I was very close to signing a settlement. I wanted to file then, in case I did sign the settlement. I signed it, but totally out of fear. I did not think the settlement was fair. The federal complaint was about more issues than the earlier state complaint. The sate complaint was about discrimination issues that I had asked the EEOC to help me with. An EEOC representative asked me why I did not file about other issues in state complaint, and I told her because I thought the statute of limitations was about to expire for the issues in the complaint that I filed. I said I wanted to file about other issues later. I was also thinking that hopefully I would be helped.

I have filed several complaints relating to my experience at Sony. Usually, I file just before when I think the statute of limitations will expire for at least one of the issues. I filed the first complaint against

Sony, in state court, one day before an EEOC letter said the statute of limitations would run out. I filed against the EEOC just before one year passed after I had received a letter stating they would not help me; I thought some issues probably had a one-year statute of limitations. I filed later against the EEOC in state court; this was an exception to my practice of filing just before when I thought a statute of limitations would expire. I was not sure if the EEOC could be taken to state court even though I thought they were supposed to have helped me with state law violations, so I did not file in state court at the same time as in federal court. Later, I decided to see if I could file in state court.

I filed against a workers' comp psychiatrist, Dr. Seltzer, in federal and state courts, just before a year passed from when I received a defaming and negative report from her. I thought medical malpractice and defamation had one-year statute of limitations. I filed against a psychologist and psychology institute in state court concerning some untrue statements and malpractice; I waited to file just before a year passed from receiving a report. I wait to file out of fear of losing everything and out of hoping to get some legal help. I do not try to get legal help as much as I did when I first started considering filing complaints in court back in 2002.

I would have probably filed the federal court complaint and an additional state complaint against Sony just before October 18, 2002, the one-year anniversary of my termination, if I had not been

about to sign a settlement. Filing in August 2002 was not consistent with my usual plans. Filing in October 2002 would have been. I usually file documents in my cases as late as I can. Although, it may seem that I filed the federal complaint against Sony in August 2002 because I had decided the union would not help, that was not the case. If the union had been involved in my thinking, I would have waited until October 2002. Ms. Page had said my EEOC related complaints had nothing to do with the union, and I believed her; these complaints were in my state complaint against Sony. I filed the federal complaint against Sony because of the probable settlement. I knew the settlement would require me to not file any new claims and would be a settlement about all claims coming before the settlement was to be signed. It is scary to me for people to make decisions about what a person knows, or is thinking, or should know. This instance shows me, and I hope the court, that things may not always be what they seem, and there may be a plausible explanation for actions or for what someone may be thinking, other than what may seem obvious to an onlooker.

It seems to me that Ms. Page's promising to help me get promoted was a promise outside of the collective bargaining agreement.

I did not state that I knew or should have known that the union and Mrs. Page were not going to help me. I will say that I did not expect them to help after the settlement was signed. That is close but not the

same. Expecting they would not help me is not the same as knowing that was wrong.

Learning they would not help me is not the same as knowing it was wrong. Even if I learned (or as I put it, expected) that no further action would be taken on my behalf, I may have learned of the alleged wrongful conduct; the problem is I alleged wrongdoing, for the first time, in my complaint in October 2003. At the time in August 2002 that I started not expecting help, it was not "alleged" wrongful conduct. I did not allege it. I did not know it was wrongful conduct. It is now alleged wrongdoing or alleged possible wrongdoing.

I have looked over and over again on the Internet and in the U.S. Code website of the House of Representatives and cannot find Section 301. My search included looking under Title 29. I got something that said it was repealed. I was wondering where to find that section.

My main point is that the statute of limitations had not passed before I filed my complaint because I did not know the defendants had done anything wrong. I am not sure how they can argue I should have known. It seems to me that I would have had to know Ms. Page was lying when she said they did what they were required to do.

(signed) 9/13/04

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Glenn Henderson — CASE NO.
Appellant/Petitioner

vs. — 04-56068
Office and Professional Employees International Union, Christine Page, Union Lawyers
Appellee/Respondent

APPELLANT'S OR PETITIONER'S INFORMAL BRIEF

1. Jurisdiction
   a. Timeliness of Appeal or Petition:
      (i) Date of entry of judgment or order of district court: 5/14/04
      (ii) Date of service of any motion made after judgment (other than for fees and costs): _____
      (iii) Date of entry of order deciding motion 5/14/04
      (iv) Date notice of appeal or petition filed 6/10/04
      (v) For prisoners, date you gave notice of appeal to prison authorities _____

   b. PLEASE ATTACH ONE COPY OF EACH OF THE FOLLOWING:

1. The order from which you are appealing
2. The district court's entry of judgment
3. The district court docket sheet

CASE NO. 04-56068 Page 2

2. What are the facts of you case?

I was employed at Sony Pictures as a regular employee from August 31, 1998 to October 18, 2001 as a Cash Allocation Clerk. I had been a temp for 2 and ½ months before being hired as a regular employee. During that employment as a regular employee, I was also in the Office and Professional Employee International Union, Local 174. I had one supervisor until about July 1999 and another one after that. I was issued a Development Plan by my second supervisor in February 2000. Some follow up written documents followed. I was told the plan was a disciplinary document; at first I thought it was supposed to be helpful tips on how to advance. I have claimed the plan was defaming, harassing, and contained lies, exaggerations, and claims that I was not doing things I was never asked to do. This supervisor was well known, by people at Sony who knew her, as a liar and harasser. I was issued a Written Warning on January 8, 2001. I have said the same about the Written Warning as I said about the Development Plan, except maybe for a complaint to a bank about harassment, and except for two or three mistakes I made in cash application. I said I was not sure about my right to complain to the bank. My

supervisor claimed I made four cash application errors. I claimed one was not an error at all, one was definitely an error, one was debatable, and one I temporarily put on an invoice that I thought some cash went to while I waited for a definite answer from a collector; I was wrong about the invoice I temporarily put the money to. I applied an average of about 60 checks a day. I complained to Human Resources and to the union about my write-ups. I filed a complaint with the EEOC in March 2001. Sony and I had an EEOC mediation about June 2001. We could not agree on a settlement. My union representative, Ms. Page, said the union had nothing to do with my EEOC complaint. In September and early October 2001, I went on jury duty. My supervisor said she did not like that I was going on a trial that should last 9 days. I reported that to Human Resources. A Vice President for Human Resources, a manager above my immediate manager, a union shop foreman, and I met about the jury duty issue on October 12, 2001. The manager said that my jury duty had to be approved by a manager because I was using my vacation time during my jury duty. On October 18, 2001, I was terminated. The Human Resources Vice President said they decided I was not treated unfairly about the jury duty, and they were terminating me. I asked if there was any one reason for my termination, and he said I was being fired for poor performance over the long term. I called the union from Sony right after I was terminated. The union filed a grievance after my termination. The

union would not help me with arbitration or any other attempt at legal remedy. I was told arbitration was the procedure. On February 27, 2002, Ms. Page said they had done all they were required to do. She said the union was not obligated to arbitrate. I believed her. In March 2002, I filed a civil complaint in state court against Sony that related to discrimination and retaliation issues. I thought the statute of limitations was going to expire. I filed a civil complaint in federal court in August 2002. I filed these complaints on my own. I reluctantly signed what I call a bad settlement with Sony in August 2002. I signed it totally out of fear. I filed this federal case and a state case against the union. I claimed that they did not help me enough.

---

3. What did you ask the district court to do (for example, award damages, give injunctive relief, order your release from prison, etc.)?

I asked for damages. I wanted help with getting a Senior Financial Analyst position or a Senior Accountant position. I wanted Ms. Page barred from working in a similar position. I wanted the lawyers disbarred. I wanted the union banned from business, at least in California. I wanted a criminal investigation. I wanted the defendants to put what they did and did not do on their resumes; I did not

like that I had to tell prospective employers about my termination, if they asked.

4. State the claim or claims you raised at the district court.

I claimed the union did not help like they should have and caused harm in addition to what Sony had caused. I claimed breach of contract, fraud, business tort/unfair business practice, defamation discrimination, retaliation, jury duty violation, corruption, FOIA violation, harassment, intentional and negligent emotional distress, theft of dues and not giving me benefits as promised, allowing a hostile working environment, conspiracy to commit fraud and violate my civil rights, and misappropriation of funds.

5. What issues are you raising on appeal?

I hope the case will not be dismissed. I believe that the statute of limitations had not expired before I filed my complaint in court. From my understanding, the statute of limitations expires six months after I knew or should have known that the union did something wrong. The district court ruled that I knew or should have known the union was not going to help me more than six months before I filed my complaint in court. I do not believe that if I knew or should have known the union was not going to help me is the same as saying I knew or should have known the union was doing something wrong or illegal, like breaching the collective bargaining agreement. On February 5, 2002, Ms. Page said the union had done all they were required to do. She said

they union did not have to help me with arbitration. I believed her. It worries me to be told what I should think or what or who I should believe. I can understand that someone might think that the idea that I knew or should have known the union was not going to help me is the same or very close to the idea that I knew or should have known the union did something wrong or illegal; I believe the two ideas are highly correlated, but not the same.

I never knew the union would not help me; I was never told that. I guessed that they would have little reason to help me after I signed a settlement with Sony. That may be considered close enough to knowing or may be reason for someone to believe I should have known. I filed my first complaint in state court against Sony in March 2002 because I thought the statute of limitations was about to expire for issues that involved my EEOC complaint. I was still hoping the union would help me with other issues. I was about to sign a settlement offer with Sony about the state complaint when I decided to go ahead and file a federal complaint. The federal complaint addressed more issues than the EEOC-related issues that the state complaint addressed. I did not file in federal court because the union did not help me. My decision was related to the possible and probable settlement in the state court matter. I had not served Sony about the federal complaint when I signed the settlement. Although, I did not really want to, I signed requests to dismiss both the federal and state complaints. I regret that I signed the settlement with

Sony. I thought it was very unfair. I signed out of fear.
I would like to say that I have felt I was treated fairly and with respect by the district court. I believe my opinions were been listened to, thought about, and considered with fairness. It amazes me how much information is in the court's written explanation.

Case No. 04-56068 Page 4

6. Did you present all these issues to the district court?

yes **If not, why?**

Yes/No

I brought my point up in a response to a motion to dismiss by the defendants. I am not sure if the court got my response in time for all. I cannot tell for sure from the order.

7. What law supports these issues on appeal? (You may, but need not, refer to cases and statutes.)

From my understanding, the Labor Management Relations Act says the statute of limitations starts when a plaintiff knew or should have known of the defendants' wrongdoing. In this case I did not believe that not helping me was wrongdoing because Ms. Page said they had done all they were required to do, and I believed her. I later decided to challenge her

claim, and so I filed a complaint. Her claim did not seem fair to me. I did not know if the union had done wrong at the time of filing this complaint, but I wanted to ask the court if they had.

Case No. 04-56068
Page 5

8. Do you have any other cases pending in this court? If so, give the name and docket number of each case.
Yes. Two.
Glenn Henderson v. Joanne Seltzer, M.D.
04-55083
Glenn Henderson v. Sony Pictures Entertainment, John Calley, Raymond Smith, Mary Burke
04-55883

9. Have you filed any previous cases which have been decided by this court? If so, give the name and docket number of each case.

No. None have been decided.

10. For prisoners, did you exhaust all administrative remedies for each claim prior to filing your complaint in the district court?

7/29/04 (signed)

DATE

SIGNATURE
409 S. Manhattan Pl. #25
Los Angeles, CA 90020

*U.S. Government Printing
Office 2003 653-65879008

Glenn Henderson

409 S. Manhattan Pl. #25

Los Angeles, CA 90020

PLAINTIFF

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

] **CASE No. CV 03-08082**
] **DDP (Ssx)**
] Opposition to
] Defendants' Motion to
] Dismiss Amended
] Complaint
]

Glenn Henderson]
]
PLAINTIFF]
]
v.]
]
Office and Professional Employees]
International Union]
Christine Page]
Union Lawyers]
]
DEFENDANTS]
]

1.a. Business Tort/Unfair Business Practice
It is not fair that the union allowed Sony to get away with violating an employee's Civil Rights, Constitutional Rights, and rights provide under the union contract. Other companies have to abide by laws that prohibit these violations. It is unfair of the union to help some union members but not others.

b. Fraud
I believe Ms. Page misrepresented the union's obligation by telling me they had done all they were required to do and did not have to take my case to arbitration. The defendants seem to be acknowledging this was wrong by saying the statute of limitations had past six months after I knew or should have known the union would not help me; this

implies that not helping me was wrong and that Ms. Page's assertion was wrong, and she knew it. Ms. Page said the union would have to consider the costs; I believe she intended to convince me they did not have to help me any further, and I believe the motive was to save money. I believed what Ms. Page told me. There was plenty of damage including loss of earnings, potential earnings, benefits, damage to reputation, emotional damage, and loss of enjoyment of fulfilling employment, an important goal of my life.

c. Defamation

In a grievance letter to Sony, Ms. Page stated she thought I had improved. That statement meant she believed I was, in fact, performing poorly and I needed to improve; that was not the case. I told Ms. Page, verbally and in written responses to my manager's charges, that my manager was lying and dishonest. Ms. Page was, in effect, calling me a liar and incompetent. Although, someone might argue some of the defamation was implied, it was necessarily implied; I believe saying that I improved, by necessity, requires the implicit statement that I was not performing adequately and needed to improve.

d. Discrimination

I have been diagnosed with depression, anxiety disorder, and post traumatic distress syndrome; that is what I mean about medical condition. I have been

treated for depression and anxiety. I consider myself reserved. I believe the union probably would have helped me more if I had been more assertive. I believe that Ms. Page may have thought I was dumb and incompetent because I was not as assertive as most men and most people might have been.

e. Freedom of Information Act ("FOIA")

Ms. Page promised to get me information, and I believe that was a promise made that was not necessarily in the collective bargaining agreement. I would have liked to have had that information regardless of whether or not the union helped me.

f. Harassment

Ms. Page's statements, such as saying that did all were required to, and not responding to some of my inquiries timely or at all, added a lot of unnecessary stress. She was giving me the message to sit there and wait and see what the union did, and we don't care how you feel. At first, I thought the union would help me and had an obligation to help me, but Ms. Page told me differently in February of 2002. I was led to believe the union was also behind me, and also, I was counting on them to help me. Giving me the brush off was stressful, and I believe, harassing. I believe Ms. Page's actions, such as phone calls that did not show the union was committed to helping me, and her inactions were meant to wear me down and get me to leave the union alone.

g. Retaliation

If Ms. Page and the union thought I was just making excuses when I complained of discrimination, whistle blowing, and retaliation, then that seems to be stereotyping. The union never investigated these complaints and said that my complaint against Sony filed at the EEOC had nothing to do with the union. The union would not even help me with the two EEOC mediations, and one involved more than EEOC matters. I believe the union was telling me that the union does not take discrimination, whistle blowing, and retaliation seriously and will retaliate by not helping people who make such claims and will stereotype them as excuse makers.

h. Jury Duty Violation

As with all of these issues, it is hard for me to understand how the union was not aiding and abetting Sony in the commission of crimes and civil wrongs. I believe allowing these things to happen, when it is one's duty to stop them, is also wrong. The union may not have initiated the action, but they helped allow this violation and other violations to happen.

i. First Amendment Violation, Pay for Work Done Violation, Perjury

The first amendment violation is in regard to my complaint to a bank about harassment from a bank employee. I think I had the right because of the first amendment, because of anti-harassment and anti-

discrimination laws, and because the bank had asked my opinion earlier. This is the one incident that I am not sure about. All other accusations by anyone at Sony were untrue or dishonest in some way. Ms. Page was aware of my complaint to the bank.

I had two meetings at Sony about being paid for overtime worked. I cannot say for sure that the union knew about it. Sony committed perjury by lying in responses to my complaints filed in court and my complaint about jury duty filed with the State Labor Board. Sony claimed jury duty had nothing to do with my firing. A union shop foreman attended a meeting at Sony about jury duty and knew that I had gotten into trouble about it. I was fired six days after this meeting. Sony lied and said I gave someone a wrong deadline, which is a total lie; I did not give anyone a deadline at all. Also, Sony said I did not give a complete list of "exceptions" to help someone make a list of sister stations, I.e. TV stations that may send one check to pay for more than the one station the check was from. I worked on it, but it was almost impossible to complete; I would have had to look at every customer listed in our files, or look at every check we ever got, to do this. That would have taken me many hours. I had never worked with a list and had never seen such a list. The person filling in for me was the one who had trained me, and she never needed one before and never gave me one. I could only think of three stations that paid for sister stations without naming the sister stations on the check back-up. Those were on my list. We had a program that

had an icon that one could click and get the parent of a station, and then one could look up any stations under the parent. Also, an invoice number, if given, could be looked up, the collector could be asked, or the customer could be called. All of these alternatives would have been easier and less costly than my taking the time to make an unnecessary list. I cannot imagine why a list, claimed to be so important that it justified termination, was ever needed until I went on jury duty.

2. Intentional, Negligent Infliction of Emotional Distress and Conspiracy to Commit Civil Rights Violation

When it is one's duty to stop it, I cannot imagine allowing anyone to experience or fear loss of job, loss of income, possible homelessness, fear of dying on the streets, and damage to reputation as being less than outrageous conduct. Sony and Ms. Page were in contact, and anyone who looks at the information about my case that both Sony and Ms. Page saw, and then concludes I was treated fairly, is lying. They both wanted nothing done to help me and correct the wrong done. The union suddenly got pay for jury duty from Sony after my case; it is hard to believe that suddenly happened without my situation being involved. If the union foreman does not say we had that meeting about jury duty, and jury duty only, the someone at Sony and/or the union threatened him, or he felt threatened.

3. Claim Against Ms. Page
If Ms. Page was not following the rules and policies of the collective bargaining agreement and lying or misleading, then she was not, in good faith, performing her duties.

B. Vagueness and Ambiguity
I hope this response helps clear what I mean.

(signed) 7/13/04

Glenn Henderson

409 S. Manhattan Pl. #25

Los Angeles, CA 90020

PLAINTIFF

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

|CASE No. CV 03-
| 0808
| DDP (Ssx)
| Amendment as

] Allowed by
] Order Granting
] the Defendants'
] Motion to
] Dismiss, Order
] dated 5-14-04
]
Glenn Henderson]
]
PLAINTIFF]
]
v.]
]
Office and Professional Employees]
International Union]
Christine Page]
Union Lawyers]
]
DEFENDANTS]
]

Amendment as allowed in III. Conclusion (1)

I believe there was unfair business tort/unfair business practice because I paid my dues, but I did not get the services promised. I was allowed to be punished and terminated without cause. I believe a union is like a regular business. A customer, client, or member pays for something and should get what was paid for. I believe not getting what was paid for is

also corruption. Christine Page told me the union had taken other cases to arbitration, including some they thought they would lose; so, to me, it seems unfair that my case was not taken to arbitration. Also, I have evidence that Ms. Page helped a union member get a different job within the same company when he was having trouble with a supervisor; I wish that had been done for me.

When I say "the union," I mean the union and Ms. Page. I believe the union committed fraud by letting me believe I could not be punished or terminated without cause and then allowing those things to happen. I believe it was fraud when Christine Page told me the union had done what they were required to do; I believed her, but now I do not think what she said was true. I believe it was fraud when Ms. Page said my written response to write-ups was my grievance. I believe it was fraud to claim the union did not have to let me speak with a lawyer, or at least someone at the union, about the issues involved at the second EEOC mediation; that mediation involved issues besides EEOC issues, and the union knew about it and agreed to it.

I believe the union defamed me by concluding they would not help me; they were saying, at least in effect, that I was such a bad employee that they would not bother helping me. They were also saying, at least in effect, that I was a liar and my supervisor was telling the truth about me, even thought I

claimed my supervisor was lying. My supervisor was well known at Sony for being a liar and being unfair. No one at the union would listen to me or look at my evidence or interview my witnesses. In the grievance filed with Sony, Ms. Page stated that she thought I had brought up my performance; that meant that my performance had been bad, but it never had been. I was actually referred to as a "miracle worker" by my supervisor, Kim Russo.

I believe the union discriminated against me because I was not as assertive as others might have been. I consider myself reserved most of the time. My personality is affected by a medical condition. I have medical records and prescriptions to show my medical condition. I believe I am sometimes thought of as not having the assertiveness and some other characteristics of a male that some people think I should have; occasionally, I believe that someone thinks that they can get away with causing me harm because of this. I believe this was the case with the union; I believe this is sex discrimination and medical condition discrimination. I believe the union dismissed my allegations of discrimination and retaliation by Sony and thought of it as excuse making on my part; I believe this is in turn discrimination and retaliation by the union. The union retaliated by not helping me, by not looking at and checking the evidence, and by ignoring me.

The union was supposed to collect documentation for me of Sony policies or procedures that Kim Russo had said I had violated; I have said those policies and procedures did not exist. I believe that was a Freedom of Information Act violation or similar legal violation.

I believe I was harassed by the union because Ms. Page said she would do things and then did not. She got my hopes up and then let me down. She also let too much time go by without getting back to me or doing something to help me. That was a very stressful situation to be in. Also, when Ms. Page said the union did not help to help me with arbitration, it was like saying sit there and wonder what we might do. The union' actions and inactions were stressful.

Also in my complaint, I meant Sony committed fraud, defamation, discrimination, retaliation, jury duty violation, perjury, first amendment violation, pay for work done violation, corruption, access to information violation, harassment, and whistle blower retaliation, and that the union was a party to this by allowing these things to happen. The union knew about all of these wrongs except possibly the whistle blower retaliation.

Amendment as allowed in III. Conclusion (3)

I believe there was negligent infliction of emotional distress because Christine Page did not do what she

said and also left me sitting there not knowing what she or the union was going to do. She never told me the union would not help me. She just said nothing about it and let time go by. She told me not to worry about the fact that Kim Russo had lied, by shaking her head no, in a meeting Ms. Page had also attended. Kim Russo had shaken her head no after I had stated what had happened in a particular situation. It was unbelievable to me that Ms. Page would let that go. Ms. Page also let many other lies by Kim Russo go without challenging them. I cannot saying for 100% sure what Ms. Page did and did not do, but to my knowledge she did not get or ask for documentation of policies and procedures that she was supposed to ask for and that she said she would ask for, I had stated that there were not policies and procedures that Kim Russo claimed existed. Ms/ Page did not help me get promoted like she claimed she would; she left me sitting there and worrying. I believe this is also a breach of contract that may or may not be considered part of the collective bargaining agreement. If I could have gotten away from Kim Russo, maybe things would have turned out better. Kim Russo was well known as a liar, a bad manager, and a very bad and unfair person. Christine Page left me worrying after I was fired if I would get my job back or if I would lose everything and become homeless and possibly die on the streets. In my opinion she let too much time go by between phone calls and updates and left me hanging about if the union would help me at all. How could she let a person just sit there and worry? I

even had to get treatment for depression and anxiety. I could not sleep and panicked and got emotionally upset. Ms. Page let things go on and on without acting. In February 2002, she told me the union did not have to help me with arbitration. It was like she was rubbing it in and saying that they had that power over me and to just sit there and worry, and they would do whatever they felt like doing. She came across as very cold and uncaring and even hostile. I even felt threatened In better not bother them; if I pushed they may not help me, and I was at their mercy. Sometimes, she would return my calls and leave a message on my answering machine saying she was returning my call, but she would not answer my questions in her message. I got the impression she did not want documentation of what she was saying or doing or not doing or what she was thinking. I think at least some of the things in this amendment could be considered intentional infliction of emotional distress. Ms. Page and the union let Sony distress me constantly by Sony's doing illegal things over and over again.

I have evidence that Ms. Page spoke with the union lawyers, with at least one person at Sony, and with the EEOC. After they looked at the facts that they all had, I do not believe any of these people could have possibly concluded that Sony did nothing wrong. I guess they looked at the information I gave them. I believe that Ms. Page, the union lawyers, and Sony did not want to bother with doing what was right and

decided they were better off not helping me. I believe Ms. Page did not want to help me and tried to think of ways to avoid it. In February 2002, she said costs were a consideration. I noticed that later, the union got jury duty pay for union members; I was fired after Kim Russo did not like that I was on jury duty for so long. Maybe, Sony agreed to give that benefit if the union did not pursue action on my behalf. Also, the union let Sony plan and conspire to take away my Civil Rights. I have witnesses who, in one way or another, have said that Sony did that.

(signed) 6/9/04

Glenn Henderson

409 S. Manhattan Pl. #25

Los Angeles, CA 90020

PLAINTIFF

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

]CASE No. CV 03-
] 0808

] **DDP (Ssx)**
] Response to
] Defendants'
] Motion to
] Dismiss or Stay
]

Glenn Henderson]
]
PLAINTIFF]
]
v.]
]
Office and Professional Employees]
International Union]
Christine Page]
Union Lawyers]
]
DEFENDANTS]
]

Response to Defendants Motion to Dismiss or Stay

I believe the union did not do enough to help me. They filed a grievance after I was fired but did not help me with arbitration. Christine Page attended a meeting in January 2001 that was also attended by two mangers, a Vice President of Human Resources, and me. Christine Page listened in, by phone, on another meeting in 2001. She reviewed some responses I wrote to write-ups. A union shop foreman

attended a meeting on October 12, 2001 that also included the Vice President of Hunan Resources and a manager; this meeting was about jury duty. I wanted to give the union credit for what they did.

II. Argument

A.1. I believe the union was guilty of business torts/unfair business practice, fraud, defamation, discrimination and retaliation, helping create a hostile working environment, not giving benefits as promised, misappropriation of funds, corruption, and harassment. They also allowed these things to occur at Sony as well as jury duty violation and whistle blower retaliation at the time of my being fired. The union may not have known about the whistle blower violation. I was not given all information collected by Sony about and not given any documentation to support any of my supervisor's claims of wrongdoing by me; I was thinking this came under Freedom of Information. Christine Page said she would request documentation about policies my supervisor claimed I violated. I do not believe Christine Page got any information because she never showed me any. At the meeting in January 2001, I told Christine Page that my supervisor was lying, and she told me not to worry about it. It seemed very important to me.

2.I wanted the union to help me with arbitration. From the information given to me by Christine Page, I thought arbitration was the procedure. I wanted to see a union attorney before I went to the EEOC mediation. Christine Page had told me that the union

had nothing to do with my EEOC complaint, so I did not ask for an attorney to represent me in mediation. I now believe they should have helped me with the EEOC mediation. I definitely do not believe that the union and Christine Page acted in good faith and with honesty of purpose in the exercise of its discretion. To this day, I do not know for sure if the union did what they were legally required to do. Christine Page said they did what they were supposed to do in a phone conversation in on February 22, 2002. I now believe this was fraud, although I believed her at the time. I thought filing a grievance must have been all they were legally required to do. No one ever told me the union would not help me more than filing a grievance. I still to this day hope they will. If when I should have known the union was not going to help me any more is important, I guess I will have to wait and see what the court says. I believe that thinking they would not help does not mean I thought they did not do their duty. Christine Page said they did their duty and did not have to help me with arbitration, and I believed her. I filed my complaints in state and federal courts because I was worried the statute of limitations would pass on some things such as discrimination. The EEOC gave me information that said I must file a complaint in court by one year after my EEOC complaint. Christine had said the union did not have to help me with my EEOC complaint. I did not want to take matters into my own hands; the union could have still helped after I filed in the courts.

3. I believe Christine Page did not do what her job duties required. I also believe what she did or did not do was criminal. My understanding is that individuals are exempt from such complaints as this if they are reasonably trying to do their jobs and follow laws.

(signed) 4/23/04

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Glenn Henderson
409 S. Manhattan Pl. #25
Los Angeles, CA 90020
213-427-0679

ATTORNEYS FOR PLAINTIFF(S)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

] **CASE No. CV 03-08082**
] **JSL**
] Amendment to
] **COMPLAINT FOR**

] Lost Wages promotions,
] emotional and punitive
] damages, Employment,
] Labor, Civil Rights
] Violation
]

PLAINTIFFS]

Glenn Henderson]
]
v.]
Office and Professional]
Employees International]
Union, Christine Page,]
Union Lawyers]

DEFENDANTS]

Amendment to Original Complaint

I would like to add a whistle blower issue as part of the complaint and as a cause of action. Sony was keeping money that customers had overpaid, and I reported it to two managers. I believe this was part of the reason I was fired and harassed.

(signed) 10/17/03

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Stamped RECEIVED AND RETURNED CLERK, U.S. DISTRICT COURT OCT 22 2003 CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY

Glenn Henderson
409 S. Manhattan Pl. #25
Los Angeles, CA 90020
213-427-0679

ATTORNEYS FOR PLAINTIFF(S)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

	CASE No. CV 03-08082 JSL PJW)
	COMPLAINT FOR Lost Wages promotions, emotional and punitive damages, Employment, Labor, Civil Rights Violation
PLAINTIFFS	
Glenn Henderson	
v.	
Office and Professional	

Employees International]
Union, Christine Page,]
Union Lawyers]
DEFENDANTS|

Stamped RECEIVED CLERK, U.S. DISTRICT COURT NOV - 5 2003 CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY

Complaint

I believe the union, Local 174, did not do what they should have to help me with my problems at Sony Pictures. The union would not help me with legal action. I could not find another lawyer. From what I understand, a lawyer outside of the union could not have helped me if he or she had wanted to because I was in a union and because the union did not say it was okay.

At Sony, I was lied about, defamed, harassed, discriminated against, denied Freedom of Information rights, denied jury duty rights (relating to length of service), and I believe retaliated against for whistle blowing to managers within the company. I was fired. Sony committed perjury by lying to the state about my jury duty situation. I was denied overtime pay and overtime benefits. I complained to a bank about harassment and was told I could not; I thought I had the right, but I am not sure about this

one. My manager at Sony, Kim Russo, could not show any documentation to sup[port claims that she made and that I said were false. Other managers denied me promotions or job changes, and I believe I was discriminated against and retaliated against for questioning if there was discrimination (in one instance) or questioning why I was denied promotions. According to information Steve Burlie gave me, I realized they lied and defamed me.

The union did nothing to help me until I was fired and then only filed a grievance. Kim Russo put me on a Development Plan that was fraudulent and defaming, and I wrote a response. I told Christine Page at the union that I wanted to file a grievance, and she said my response was my grievance. I believe her statement was fraudulent. She said she would help me get promoted and never did. After I was fired on October 18, 2001, I told her that I filed a complaint with the state about jury duty, and she remarked that getting my job back because of the jury duty issue would be getting it back on a "technicality." I do not believe any issues were technicalities; I think they were all serious. I had two meditations set up by the EEOC; the union would not help. Christine Page said my complaint filed with the EEOC was between me and the EEOC, and the union had nothing to do with it. I asked Christine Page if I could speak with the union lawyers before the second mediation, but I was not allowed; at the request of Sony, the second mediation involved more than the EEOC related issues. The union never told me if they

would help me or not with arbitration. I filed a case on my own, and I signed a bad deal out of fear of what might happen to me if I lost the case. After being fired, Christine said she would speak to someone at Sony, said she spoke with a union rep, who was present at a discussion at Sony about my jury duty issue, and said the union filed a grievance. To my knowledge, the union did not take further action dealing with Sony. Christine said they did what they were required to do. The union sent my resume to one place on their own that I know of after I was fired. I also called the union job line and asked to have my resume sent out.

(signed) 10/15/03

Causes of Action

Business tort/unfair business practice, fraud, defamation, discrimination, retaliation, jury duty violation, corruption, FOIA violation, breach of contract, harassment, intentional and negligent emotional distress, corruption, theft of part of my dues and not giving me benefits as promised, allowed a hostile working environment, conspiracy to commit fraud and violate my civil rights within the union, with union and their lawyers, and probably between union and Sony, misappropriation of funds, and any other wrong the court or jury sees.

(signed) 10/15/03

Remedy

I would like to receive compensation that I should have gotten from Sony (including emotional and punitive against Sony), punitive damages against the union, emotional damages against the union. I would like Christine Page and lawyers removed from positions. I would like the lawyers disbarred. I would like Christine Page to be not allowed to work with any union or make decisions relating to money or someone's job. I would like the union barred from business, at least in CA. I would like a criminal investigation and prosecution against Page, lawyers and anyone else involved. I would like the people involved to have to put on their resumes what they did and did not do. I would like to be placed into a Senior Financial Analyst position or Senior Accountant position.

(signed) 10/15/03

Docket No: 051440

Supreme Court, U.S.
FILED
JUL 20 2006
OFFICE OF THE CLERK

United States Supreme Court

Glenn Henderson
Plaintiff

v.

Office and Professional Employees International Union and Christine Page

Petition for Rehearing on Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth District

Petition for Rehearing of Order Denying Petition for Writ of Certiorari

Glenn Henderson, Plaintiff pro se
409 S. Manhattan Pl. #25
Los Angeles, CA 90020
213-427-0679

Questions

1. What is the definition of should have known and will the United States Supreme Court define it?
2. Should the contract have been examined?
3. Was there a jurisdiction issue and should part of the case been sent back to state court?
4. Did the appeals court and district court wrongly accuse me, and as a consequence, not give me a fair hearing?
5. Did the appeals court repeat what the district court said without adequately analyzing issues?
6. Do I have the right to argue that there should be a law to let me clear my name even if there is no other remedy?
7. Should I have known the union would not help me when I signed a settlement with my former employer?

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Table of Authorities

Federal Rule of Civil Procedure 11 3

Statement of the Points

1. Will the Court define "should have known or clarify what it means?" Is it a heavy burden to show that someone should have known someone did something wrong? Is that as hard or harder to conclude than a person is guilty beyond a reasonable doubt? In this case, the union said they had done what they were required to do. They have said that all along and yet argued that I should have known they did wrong. Is the meaning of "should have known" used uniformly in all cases? How has the phrase been used in other cases? The lower courts ruled that the statute of limitations began when I knew or should have known the union was not going to help me. That has never, ever meant the same as I, or anyone, knew the union or anyone did something wrong. The two ideas are not equivalent even if they often go together a lot.
2. Should the contract have been examined? The district court judge said that the contract needed to be examined to determine what the union was required to do, yet the contract was never examined. I do not understand how anyone can then say I should have known the union did wrong unless the judge looked at the contract.
3. Was there a jurisdiction issue and should part of the case have gone back to state court? Did fraud and/or breach of contract occur, and did the contract not have to be reviewed to determine

that? When I was first hired and without showing me the contract, the union sent me a letter that stated, "THE CONTRACT prohibits discipline or discharge by your employer, except for just cause, once you have completed your probationary period." That did not happen for me. The letter also stated, "THE CONTRACT establishes a grievance procedure with binding arbitration to take up and resolve your complaints in a way that gets results. I got no results and all steps of the procedure were not done. The union did not even look at all my evidence or even meet with me after my termination. I did not remember this letter until I came across it in January 2005. I filed a similar case in state court about the same time, but it deferred to federal court on all issues. Please see the Appendix for the first three pages of the letter from the union.

4. Did the appeals court and district court wrongly accuse me? The appeals court stated that I acknowledged in my motion to dismiss that in February 2002 the union would no longer assist me. That was not true. No one else claimed I acknowledged that, including the defendants, their lawyers, and the district court judge. I stated that, "I thought the union would help me and had an obligation to help me, but Ms. Page told me differently in February 2002". I meant only that Ms. Page told me the union did not have to help me not that the union would not help me. A sentence with two claims, separated by an "and,"

is untrue if one or both claims or untrue, but both claims do not have to be untrue for the sentence to be untrue. Elsewhere in my papers, I stated Ms. Page told me the union did not have to help me but never told me they would not help any more. After Ms. Page's remarks, I believed then that the union did not have to continue to help me but might. I now believe they should have continued to help me. I made the three-year state statute of limitations for fraud or breach of contract whether or not I should have known they did something wrong. The district court judge stated that clearly I knew the union was not going to help me when a filed a case with my former employer in August 2002. I filed because I was going to sign a settlement in state court. The state court case involved promotion issues only that I had gone to the EEOC about, and that Ms. Page said the union had nothing to do with. I could have filed the federal case in hopes that case could continue after the settlement or just to have a record of my complaint. The federal case included most issues up to my termination and not just promotions.

5. Did the appeals court repeat what the district court said without analyzing issues? I read about a case that the United States Supreme Court sent back to an appeals court because the appeals court basically and simply repeated what the district court said. I cannot remember the case name. The appeals court referred to a lot of cases, which

seemed good to me, but the appeals court did not discuss the cases and applications to my case.

6. Do I have the right to argue that there should be a law to let me clear my name even if there is no other remedy? Does rule Federal Rule of Civil Procedure 11 allow this? I ask to be allowed to clear my name. Have courts ruled that a person should have a chance to clear his or her name if the government is involved? Does a court case mean the government is involved? Ms. Page defamed me and may have committed perjury regarding my job performance in a state court paper. She also lied and committed perjury by saying she told me the union would no longer help me.
7. Should I have known the union would not help me after I signed a settlement with my former employer? I believed the union would probably not help me after I signed a settlement with my former employer because I thought the former employer was going to inform the union about the settlement. The union never knew about the settlement until I mentioned it in a deposition in late 2004. So, does that not mean I should not have known the union would not help me just after the settlement was signed in August 2002 because the union did not know about the settlement until over two years later?

Attorneys of Record

Glenn Henderson, Plaintiff pro se
409 S. Manhattan Pl. #25
Los Angeles, CA 90020
213-427-0679

Jeffrey Wohlner,
Attorney for Office and Professional Employees
International Union and Christine Page
15456 Ventura Blvd., Suite 500
Sherman Oaks, CA 81403
818-501-5306

Certification

This petition is restricted to the grounds of intervening circumstances or to other substantial grounds not previously presented. It is presented in good faith and not for delay.

Appendix

Letter from the Union

Local 174 (logo) AFL-CIO-CLC

Office and Professional Employees International Union

WELCOME TO THE OFFICE & INTERNATIONAL EMPLOYEES UNION LOCAL 174
PLEASE READ CAREFULLY ANDRETAIN FOR FUTURE REFERENCE

This letter contains important information about:

. Union Representation
. The Union itself.
. The contract with your employer.
. Rights of membership.
. Rights of employers under union security clauses.
. Additional information concerning employee, member and contract benefits.

As a new employee in the bargaining unit, you are represented by OPEIU Local 174. If you are like many new employees, this may be the first time you have ever been represented by a Union and you may have some questions as to what this means to you.

Union representation means that OPEIU Local 174 on your behalf and with the full and active

178 SOUTH VICTIORY BOULEVARD, SUITE 208 . BURBANK, CA 91502 .
TELEPHONE:(818)842-9988 . FAX:(818)563-5495

participation of its members negotiates and administers a legally binding contract known as a collective bargaining agreement that sets forth your wages, benefits, hours and all your working conditions. Because all employees together through the Union, Union members receive higher wages and better benefits than nonunion workers doing similar jobs. Strength in numbers makes this possible.

The Local Union is part of the Office and Professional Employees International Union. The International Union has a highly trained and motivated staff to help Local Unions. This Local can draw on the resources including modern technology and research departments.

The officers of Local 174 are President, Vice-President, Secretary-Treasurer, Recording Secretary, Three Trustees and a Conductor. Your contract is administered by your Business Representative. Should you have any questions or problems, you should contact your Business Representative. Our officers are elected by the membership in secret ballot elections. As a member, you will get to participate in those elections.

The Local Union has mettings quarterly. These meetings are important and as a member, you are encouraged to come and participate in the affairs of your Local Union.

Without a legally binding contract, the law allows an employer to fire you for most any reason, to change your wages or hours without your consent

and there are few restrictions set by law regarding what the employer can do. With our Local Union contract, there is a legally binding agreement that is enforceable.

As an employee represented by the Union, you can enjoy all the benefits of this contract. This contract establishes your wages, hours, benefits and working conditions. This contract does much more:

THE CONTRACT protects your seniority which will become increasingly important to you the longer you are working for the employer;

THE CONTRACT prohibits discipline or discharge by your employer, except for just cause, once you have completed your probationary period;

THE CONTRACT provides for vacations paid by your employer and negotiated by the Local Union;

THE CONTRACT provides for health and welfare and pension benefits paid for you by your employer and negotiated by the Local Union;

THE CONTRACT establishes a grievance procedure with binding arbitration to take up and resolve your complaints in a way that gets results;

THE CONTRACT provides many more benefits, all of which are detailed in the written agreement and negotiated by the Local Union.

Perhaps the greatest benefit of being covered by a Local Union contract is the knowledge and security that the provisions cannot be changed whenever the employer decides. No changes can be made without the Local Union's agreement. The Local Union and the employer do negotiate new agreements when the

old agreements expire. At that time, we seek improvements and better wages and working conditions.

In addition to the specific benefits of the Local Union contract, when you become a member of this Local Union, you will be able to:

VOTE YOUR CONSCIENCE on acceptance or rejection of proposed contracts that would set your wages, benefits and working conditions;

FULLY PARTICIPATE in the development of contract proposals, election of officers and Union activities; and

BENEFIT from other programs such as discount cards, discount coupons and other services available only to Union members and their families, such as OPEIU scholarships.

When you become a member of Local 174, we hope that you will take advantage of your membership and become an active, involved member. Strong, active and informed members are essential to the strength of Local 174. In the long run, your participation will benefit both you and your coworkers by helping the Union gain improved benefits and working conditions.

Enclosed with this package is a membership application. After you read this letter, we urge you to fill it out, sign and date it and return it as soon as possible. Do it today, so you can start enjoying the full benefits of membership in Local 174.

Also enclosed is a dues checkoff authorization. This permits your employer to automatically remit

your dues to the Local Union. This saves you from having to pay the dues on a monthly basis by direct payment. Virtually everyone in the Union uses this system and we encourage you to take advantage of it.